United Supermarkets, Inc. *and* Retail Clerks Union, Local No. 368, AFL-CIO, chartered by United Food and Commercial Workers International Union, AFL-CIO.[1] Cases 16-CA-7365, 16-CA-7378, 16-CA-7473, 16-CA-7500, 16-CA-7524, 16-CA-7554, 16-CA-7561, 16-CA-7666, 16-RC-7556, and 16-RC-7579

May 28, 1982

DECISION, ORDER, CERTIFICATION OF REPRESENTATIVE, AND DIRECTION OF SECOND ELECTION

On December 18, 1980, Administrative Law Judge Robert C. Batson issued the attached Decision in this proceeding. Thereafter, Respondent, the Charging Party, and the General Counsel each filed exceptions and supporting briefs, and Respondent thereafter filed an answering brief to the exceptions and briefs filed by the Charging Party and the General Counsel.

The Board has considered the record and the attached Decision in light of the exceptions[2] and briefs and has decided to affirm the rulings, findings,[3] and conclusions of the Administrative Law Judge and to adopt his recommended Order,[4] as modified herein.

The Administrative Law Judge set aside the election in the grocery unit on the basis of various unfair labor practices and objectionable conduct committed by Respondent. Having determined that the evidence failed to demonstrate that the Union had obtained signed authorization cards from a majority of the unit employees and citing *United Dairy Farmers Cooperative Association*,[5] the Administrative Law Judge concluded that a bargaining order is inappropriate in these circumstances and ordered that a second election be held. Nevertheless, both the General Counsel and the Charging Party contend that Respondent's conduct was so serious and substantial in nature as to warrant imposition of a remedial bargaining order irrespective of whether the Union had demonstrated support from a majority of the unit employees. In light of the Board's most recent statement on this issue in our Supplemental Decision in *United Dairy*, hereinafter referred to as *United Dairy II*, we believe the General Counsel's and the Charging Party's exceptions merit further discussion.

The pivotal case dealing with the subject of remedial bargaining orders is *N.L.R.B.* v. *Gissel Packing Co., Inc.*[6] In that case the Supreme Court grouped unfair labor practice cases dealing with preelection misconduct into three categories. The first category is characterized as "exceptional" cases which are marked by conduct so "outrageous" and "pervasive" as to render traditional remedies ineffective. In such cases, the lingering coercive effects of the respondent's conduct preclude holding a fair election. Under these circumstances there is no need to inquire into the majority standing of the union, either by authorization cards or otherwise, and a requirement that the respondent bargain with the union is the only effective means of ensuring the employees' representational rights. Another group of cases is less extraordinary, marked by less pervasive unlawful practices, but which yet tend to undermine support for the union and interfere with the electoral process. In cases of this type the twin goals of effectuating employee free choice and deterring employer misbehavior stand on equal footing. Accordingly, the Board appropriately is guided by objective manifestation of employee sentiment as evidenced through authorization cards. If the evidence indicates that the union enjoyed majority support at some point, this will suffice to justify a bargaining order. The third category of cases involves less extensive unlawful practices which affect the election processes to a more limited extent. In cases of this type a bargaining order is not necessary to provide adequate remedial relief.

In *United Dairy II* the Board determined that the employer's course of unlawful conduct fell into the first *Gissel* category, "completely foreclos[ing] the possibility of a fair election,"[7] and we ordered the

[1] The name of the Charging Party reflects the merger of the Retail Clerks International Union and the Amalgamated Meatcutters and Butcher Workmen of North America on June 7, 1979.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Charging Party's request for oral argument is hereby denied as the record, exceptions, and briefs adequately present the issues and positions of the parties.

[3] In adopting the Administrative Law Judge's Decision we find that his statement in sec. III,B, entitled "Preliminary Statement Concerning the Evidence and Mode of Analysis Thereof" that by our decision in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), "the Board has obviated the 'perceivable significance' between pretext and dual motive cases" is overly broad. For further discussion of this issue see *Limestone Apparel Corporation*, 255 NLRB 722 (1981).

[4] We hereby correct an inadvertent error by the Administrative Law Judge wherein he refers to Steve Johns as the head meatcutter at Store No. 527 rather than Store No. 529.

In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

[5] 242 NLRB 1026 (1979), enfd. and remanded 633 F.2d 1054 (3d Cir. 1980), 257 NLRB 772 (1981). At the time the Administrative Law Judge issued his Decision the Board had accepted the Third Circuit's remand but had not issued its Supplemenal Decision.

[6] 395 U.S. 575 (1969).

[7] 257 NLRB 772.

employer to bargain with the union. In that case the employer embarked on its unlawful counter-organizational campaign as soon as it learned of the unionization effort and continued its retaliatory activities even after the election had taken place. Among its responses were threats by the company president to shut down the plant, discharging union activists, distributing unprecedented cash bonuses to employees, attempts to convert employees into independent contractors, interrogations, and threats of physical violence. The Board cited the "gravity, extent, timing, and constant repetition of the violations . . . against a background of prior serious misconduct"[8] in finding that no remedy short of a bargaining order could prove effective.

A case which also fits into this "exceptional" category is *Conair Corporation*, 261 NLRB 1189 issued this date. In that case the employer launched its campaign of employee intimidation as soon as it learned of the union's organizational efforts. A series of unprecedented meetings was held in which employee grievances were solicited and threats of plant closure and loss of benefits were made. The employer also interrogated employees and implied that their activities were under surveillance. In the face of this onslaught, employees sought to retrieve their signed authorization cards from the union. An unfair labor practice strike ensued, whereupon the employer terminated all strikers and offered nonstrikers increased benefits and better working conditions. The employer conditioned striking employees' return upon their signing away Section 7 rights. When some strikers were eventually reinstated they were treated as new hires, without any accrued seniority, only to be later discharged because of their previous involvement in protected activities. As the election neared, the employer stepped up the pace of its unlawful conduct, which included soliciting grievances, promising improved conditions, threatening shutdown and cessation of benefits, interrogations, and implementing a profit-sharing plan for nonunion members only. The employer's lengthy campaign—lasting from early April 1977 until *after* the December 1977 election—involved speeches, one-to-one conversations, posters, and printed literature and ranged the gamut of unlawful conduct aimed at undermining employee support for the union. A Board majority determined that the nature of the violative conduct found in *Conair* fit squarely into the outrageous and pervasive description under *Gissel* category 1 and ordered that the employer bargain with the union even though no card majority was demonstrated.

[8] *Id.*

Turning to the facts of the instant case, we find that Respondent's conduct, while extensive and serious, does not reach the level requiring a bargaining order where no card majority was found to exist. Efforts to organize the meat department and grocery department employees[9] began in late May 1977.[10] Respondent's unlawful reaction began around mid-June. As more fully described in the Administrative Law Judge's Decision, Respondent discriminatorily discharged seven grocery unit employees between July 25 and September 26 and committed approximately 31 additional independent violations of Section 8(a)(1). The unlawful conduct included interrogations, creating the impression that employees' activities were under surveillance, soliciting employees to spy on union activities, promulgating an unlawful no-solicitation rule, threatening losses of jobs and more onerous working conditions, warning that selecting the Union would be futile, and promising improved wages and benefits if the Union were rejected. While we recognize the gravity of such disregard for employee rights by setting aside the election held in its aftermath and ordering certain extraordinary access and notice remedies, we do not believe that the totality of Respondent's conduct has completely foreclosed the possibility of holding a fair election.

A number of factors have led us to the conclusion that the violations in this case do not warrant a nonmajority bargaining order. Unlike the situation in *Conair, supra*, Respondent's illegal activity subsided well in advance of the grocery unit election. The last two unlawful discharges occurred in late September, more than 2 months before the election. Most of the unlawful activity took place in July, prior to the meat market election. Thereafter, Respondent waged a less aggressive campaign against the grocery unit unionization despite the Union's victory in the earlier election.

In addition, this case differs from *Conair* in that there were no captive audience speeches, no mass appeals to employees, no wholesale retaliatory terminations, and no orchestrated escalation of anti-union activity. Instead, most of the violations involved individual encounters between a single supervisor and a single employee. In addition, while we do not discount the seriousness of a first-line supervisor's remarks linking unionization to possible job displacements, we recognize that the impact of

[9] This case involved elections in two separate units, the meat market and the grocery unit. The election among the meat department employees was held on August 26, 1977, and resulted in the Union's election as representative. The grocery unit election was held on December 7, 1977, and the Union was defeated. Only those violations arising in the grocery unit are involved in our bargaining order determination.

[10] All dates hereafter refer to 1977 unless noted otherwise.

such remarks is less severe than a higher management official's threat to close down an entire plant.

The impact of Respondent's unfair labor practices was also diffused in this case because seven different facilities located throughout the Amarillo, Texas, area were involved. Geographic separation of this type would tend to lessen the effect that the sheer number of violations would otherwise suggest.

In brief, the circumstances of this case present serious and rather widespread unfair labor practices. As indicated, however, these unfair labor practices differ significantly in gravity, extent, and timing from those found in either *United Dairy or Conair*, where the employers waged unrelenting and massive coercive efforts, demonstrative of their complete and total disregard for employees' rights. In neither of those cases was it necessary to inquire into the majority status of the union in order to determine that only a bargaining order could effectively remedy the employers' outrageous conduct. They were clearly "exceptional," first-category *Gissel* cases, whereas the instant case falls short of this level. In view of this determination, we are guided by the fact that no card majority was found to have existed in favor of union representation and we therefore will issue no bargaining order. Accordingly, we adopt the Administrative Law Judge's recommendations in section VI of his Decision entitled "The Remedy," including various extraordinary remedies in recognition of the seriousness of Respondent's unlawful conduct.[11]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified and set forth in full below, and hereby orders that the Respondent, United Supermarkets, Inc., Lubbock, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating its employees concerning their union activities and the union activities of other employees.

(b) Threatening its employees with loss of existing benefits or a reduction thereof if they support or assist the Union or any other labor organization.

(c) Soliciting employees to spy upon the union activities of others and report on such activities to management.

(d) Expressly or impliedly promising benefits to its employees to discourage support of the Union or any other labor organization.

(e) Threatening employees with store closures and loss of employment if they continue to support or assist the Union or any other labor organization.

(f) Engaging in surveillance of union activity or creating the impression that such activity is subject to surveillance.

(g) Threatening employees with discharge or layoff if they select the Union to represent them.

(h) Threatening its employees that it will reduce its work force and increase production demands if the Union is selected to represent them.

(i) Threatening its employees that it would be futile for them to select the Union to represent them by telling them that it would never sign a contract.

(j) Discouraging membership in a labor organization by discharging, refusing to reinstate in timely fashion or to reinstate at all, or otherwise discriminating against employees in their hire and tenure.

(k) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Offer to Priscilla Sain, Van Bollen, Donna Bates, Rick Stanberry, Claude Murray, Tanna Stoops, Mark Soltis, Judy Grove, and Faye Bonner immediate and full reinstatement to their former positions or, if those positions are no longer available, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed.

(b) Promote Mark Solitis to the position of third man.

(c) Make the employees named above in paragraph (a) whole for any loss of pay or other benefits they have sustained by reason of the discrimination against them in the manner set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy."

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

[11] In view of the Administrative Law Judge's failure to specify a time period during which Respondent is required to grant the Union access to store bulletin boards and nonwork areas, we hereby modify pars. 2(h) and (i) of his recommended Order and notice to provide for a 2-year period. We shall further modify pars. 2(g) and (h) of his recommended Order and notice to limit the application of those paragraphs to Respondent's Amarillo, Texas, stores.

(e) Mail a copy of the attached notice marked "Appendix A"[12] to each and every employee at his or her home address and post copies thereof at all its retail grocery stores in west Texas. Copies of said notice, on forms provided by the Regional Director for Region 16, shall be personally signed by Respondent's owner. Copies of said notice shall be mailed by Respondent to each and every employee working at its retail grocery stores on the date on which such notice is mailed, and additional copies shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Convene during working time all employees at its Amarillo, Texas, stores, either in shifts or departments, or otherwise, and have Respondent's owner read to the assembled employees the contents of the attached notice marked "Appendix A." The Board shall be afforded a reasonable opportunity to provide for the attendance of a Board agent at any assembly of employees called for the purpose of reading such notices.

(g) Upon request of the Union made within 1 year of the issuance of the Order herein, without delay make available to the Union a list of names and addresses of all employees employed at the time of the request at Respondent's Amarillo, Texas, stores.

(h) Immediately upon request of the Union, for a period of 2 years grant the Union and its representatives reasonable access to bulletin boards, and all other places where notices to employees are customarily posted, at Respondent's Amarillo, Texas, stores.

(i) Immediately upon request of the Union, for a period of 2 years permit a reasonable number of union representatives access for reasonable periods of time to nonwork areas within its Amarillo, Texas, stores, so that the Union may present its views on unionization to the employees, orally and in writing, in such areas during changes of shift, breaks, mealtimes, or other nonwork periods.

(j) In the event that any supervisor or agent of Respondent convenes any group of employees at Respondent's Amarillo, Texas, stores and addresses them on the question of union representation, give the Union reasonable notice thereof and afford two union representatives a reasonable opportunity to be present at such speech, and, upon request, give one of them equal time and facilities to address the employees on the question of union representation.

(k) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

As we have adopted the Administrative Law Judge's recommendation to overrule the Employer's objections to the conduct of the election in Case 16-RC-7556, we shall certify the Union as representative.

As we have adopted the Administrative Law Judge's recommendation to sustain Petitioner's Objections 6 and 8 to the conduct of the election in Case 16-RC-7579, it is hereby ordered that the election in that case be, and it hereby is, set aside, and a second election directed.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Retail Clerks Union, Local No. 368, AFL-CIO, chartered by United Food and Commercial Workers International Union, AFL-CIO, and that, pursuant to Section 9(a) of the Act, that labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

> Included: all butchers and wrappers located in the United Supermarkets, Inc., stores in Amarillo, Texas. Excluded: Head meatcutters, all other employees (grocery department employees), office clerical employees, managers, assistant managers, watchmen and supervisors as defined in the Act.

[Direction of Second Election[13] omitted from publication.]

MEMBER HUNTER, concurring:

I join my colleagues in adopting the Administrative Law Judge's unfair labor practice findings, and I agree with my colleagues that a bargaining order should not issue in this case. However, in declining to issue a bargaining order, I rely on my separate opinion in *Conair Corporation*, 261 NLRB 1191 (1982), in which I set forth my position that I would not issue a bargaining order where, as here, the union never attained majority status.

[12] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[13] [*Excelsior* footnote omitted from publication.]

CHAIRMAN VAN DE WATER, concurring in part and dissenting in part:

I join my colleagues in adopting the Administrative Law Judge's unfair labor practice findings.[14] I also agree with my colleagues that a bargaining order should not be issued here. In this regard, I rely on my separate opinion in *Conair Corporation*, 261 NLRB 1189 (1982), in which I set forth my position that, for both statutory and policy reasons, I would not issue a bargaining order where, as here, the union never enjoyed majority status. In fashioning a remedy for Respondent's unlawful conduct, which the Administrative Law Judge properly termed "outrageous" and "pervasive," I believe that *all* the extraordinary measures upheld by the District of Columbia Circuit Court in the *Haddon House* case are warranted, and I dissent from my colleagues' refusal to order them here.[15]

[14] However, I find it unnecessary to rely on the cases cited in fn. 12 of the Administrative Law Judge's Decision. In addition, since Respondent's unfair labor practices are sufficient to warrant setting aside the election in Case 16-CA-7579, which Petitioner lost, I find it unnecessary to pass on Petitioner's Objections 6 and 8, which the Administrative Law Judge recommended be sustained.

[15] *Teamsters Local 115, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [Haddon House Food Products, Inc.]* v. *N.L.R.B.*, 640 F.2d 392 (1981), cert. denied 102 S.Ct. 141, 92 LC 13,018 (1981). Thus, in addition to the extraordinary remedies provided in the Administrative Law Judge's recommended Order and adopted by my colleagues, I would also require Respondent to include a copy of the notice in appropriate company publications and local newspapers, and to provide the Union an opportunity to deliver a 30-minute speech to employees on company premises prior to any scheduled election, regardless of whether Respondent makes a similar address to employees.

Furthermore, I would modify the Administrative Law Judge's recommended Order by: (1) requiring that the notice be read by "a responsible officer of Respondent," rather than by "Respondent's owner" (see fn. 28 in my *Conair* opinion); and (2) placing a 2-year time limitation on par. 2(j) consistent with the 2-year limitation my colleagues place on pars. 2(h) and (i).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT do anything that interferes with, restrains, or coerces employees with respect to these rights. More specifically,

WE WILL NOT discharge or in any other manner discriminate against employees because of their union activities.

WE WILL NOT threaten employees with, or warn employees of, discharge, loss of benefits, or other reprisals because of their union activities, membership, or support.

WE WILL NOT threaten to close any of our stores in order to prevent union activities among our employees.

WE WILL NOT discourage membership or activities on behalf of Retail Clerks Local 368, AFL-CIO, or any other labor organization, by discharging employees or discriminating against them in their hire or tenure.

WE WILL NOT coercively interrogate employees concerning their union membership, activities, or support.

WE WILL NOT solicit our employees to spy upon the union meetings or other union activity of our employees and report such activity to us.

WE WILL NOT promise improved or additional new economic benefits or other terms or conditions of employment if they abandon their support of a union.

WE WILL NOT create among our employees the impression that their union activities are under surveillance.

WE WILL NOT threaten to never negotiate with a union should it lawfully represent our employees in order to discourage union membership, activities, or support.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer Priscilla Ann Sain, Van Bollen, Donna Bates, Rick Stanberry, Claude Murray, Tanna Stoops, Mark Soltis, Judy Grove, and Faye Bonner immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without loss of seniority and other rights and privileges previously enjoyed.

WE WILL promote Mark Soltis to the position of third man.

WE WILL make whole the employees named above for any loss of pay or other benefits sustained by them by reason of our discrimination against them, with interest upon any moneys due them.

WE WILL send to all our employees copies of this notice; WE WILL read this notice to all our employees.

WE WILL, upon request of the Union made within 1 year of issuance of the Board's Decision and Order, make available to the Union a list of names and addresses of all our employees currently employed at our Amarillo, Texas, stores.

WE WILL, immediately upon request of the Union, for a period of 2 years, grant the Union and its representatives reasonable access to our bulletin boards, and all other places where notices to employees are customarily posted, located in our Amarillo, Texas, stores.

WE WILL, immediately upon request of the Union, for a period of 2 years, grant the Union and its representatives reasonable access to our Amarillo, Texas, stores in nonwork areas during employees' nonwork time in order that the Union may present its views on unionization to employees, orally and in writing, in such areas during changes of shift, breaks, mealtimes, or other nonwork periods.

WE WILL, if we gather together any group of our employees on worktime at our stores and speak to them on the question of union representation, give the Union reasonable notice and give two union representatives a reasonable opportunity to be present at such speech and, on request, give one of them equal time and facilities also to speak to you on the question of union representation.

Our employees have the right to join Retail Clerks Union, Local No. 368, AFL-CIO, chartered by United Food and Commercial Workers International Union, AFL-CIO, or any other labor organization or to refrain from doing so.

UNITED SUPERMARKETS, INC.

DECISION

STATEMENT OF THE CASE

ROBERT C. BATSON, Administrative Law Judge: This consolidated proceeding under the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et. seq.*, herein the Act, was heard before me in Amarillo, Texas, based on a third amended order consolidating cases, amended consolidated complaint, and notice of hearing issued by the Regional Director for Region 16 (Fort Worth, Texas), as further amended at the hearing, arising out of charges filed by Retail Clerks Union, Local No. 368, AFL-CIO, chartered by United Food and Commercial Workers International Union, AFL-CIO, herein called the Union,[1] alleging that United Supermarkets, Inc., herein the Respondent, the Company, or the Employer, had violated Section 8(a)(1), (3), and (5) of the Act. Consolidated for hearing also are the issues raised by the Employer's Objection 5 and part of its Objection 1, which were filed to the election in Case 16-RC-7556, and the Union's objection to the election in Case 16-RC-7579.

The petition for an election in Case 16-RC-7556 was filed on July 1, 1977,[2] by General Drivers, Warehousemen and Helpers Local Union 577. On July 6, the Union herein intervened. On July 25, the Regional Director for Region 16 approved a Stipulation for Certification Upon Consent Election in an appropriate unit,[3] pursuant to which an election was conducted on August 26. There were 22 eligible voters, of which 12 cast valid votes for the Union; none cast valid votes for the Teamsters; 4 cast valid votes against the Unions; and 3 cast challenged ballots. On September 2, the Employer filed objections to the election. On November 2, the Regional Director issued his Report on Objections, wherein he recommended that the objections be overruled and a Certification of Representative be issued. Upon proper exceptions, the Board directed that a hearing be held on the Employer's Objection 5 and part of its Objection 1.

The petition for an election in Case 16-RC-7579 was filed by the Union on August 5. Pursuant to a Decision and Direction of Election dated November 4, an election was conducted in the unit found appropriate[4] on December 7. There were approximately 109 eligible voters, of which 26 cast valid votes for the Union; 62 cast valid votes against the Union; and 22 cast challenged ballots. The Union filed objections to the election on December

[1] The charge in Case 16-CA-7365 was filed on July 25, 1977, and amended on August 2 and 4, 1977; the charge in Case 16-CA-7378 was filed on July 29 and amended on August 4, 1977; the charge in Case 16-CA-7473 was filed on September 12, 1977; the charge in Case 16-CA-7500 was filed on September 23 and amended on October 31, 1977; the charge in Case 16-CA-7524 was filed on September 30, 1977; the charge in Case 16-CA-7554 was filed on October 13, 1977; the charge in Case 16-CA-7561 was filed on October 14, 1977; and the charge in Case 16-CA-7666 was filed on December 16, 1977. All charges were properly served on the Respondent.

[2] All dates hereafter are in 1977 unless otherwise indicated.

[3] The stipulated appropriate unit is:

Included: All butchers and wrappers located in the United Supermarkets, Inc., stores in Amarillo, Texas.

Excluded: Head meatcutters, all other employees (grocery department employees), office clerical employees, managers, assistant managers, watchmen and supervisors as defined in the Act.

[4] The unit found appropriate is:

Included: All regular full-time employees, including bakery department employees, and regular part-time employees who have worked at least 18 separate weeks preceding this Decision and Direction of Election employed at the Employer's seven retail grocery stores located in Amarillo, Texas.

Excluded: All part-time sackers who have worked for the Employer less than 18 weeks, managers, assistant managers, meat department employees, watchmen, guards and supervisors as defined in the Act, as amended.

12. On January 31, 1978, the Regional Director for Region 16 issued his supplemental decision wherein he ordered a hearing on portions of Objections 6 and 8, consolidated said objections with the unfair labor practice complaint for hearing, and further ordered that matters alleged in the complaint be considered in determining whether the election should be set aside.

The complaint, as amended at the hearing, alleges in excess of 70 independent 8(a)(1) violations involving 17 of the Respondent's supervisors. The complaint further alleges that between July 15 and October 8 the Respondent discharged 12 employees in violation of Section 8(a)(3) of the Act, demoted and withheld wage increases also in violation of Section 8(a)(3), constructively discharged one employee in violation of Section 8(a)(3), and further discharged its supervisor, Max Ward, in violation of Section 8(a)(1).

The General Counsel and the Charging Party contend that the Respondent's conduct alleged in the complaint is so "outrageous and pervasive" that the traditional cease-and-desist and make-whole remedies will not eradicate the effects thereof, that a second free and fair election in the grocery unit would be impossible, and that a bargaining order is warranted under the Board's application of the holding of the United States Supreme Court in *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969). At issue in this regard is the very close question of whether at any relevant time on or after August 4 the Union had valid authorization cards from a majority of the employees in the unit.

As hereafter found, the General Counsel has sustained his burden of proof by a preponderance of the credible evidence that the Respondent has committed not all, but a very substantial number, of the complaint allegations which are of such a serious nature that the effects thereof on the employees cannot be eradicated so that a free and fair election can be held. Whether a bargaining order is appropriate in this case depends on whether the General Counsel has established that at a relevant time after August 4 the Union had obtained valid authorization cards from a majority of the employees in the unit. *United Dairy Farmers Cooperative Association*, 242 NLRB 1026 (1980).

Upon the entire record in this case, including consideration of able briefs filed by counsel for the General Counsel, the Respondent, and the Charging Party, and from my observation of the testimonial demeanor of the witnesses testifying under oath,[5] I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is, and has been at all times material herein, a Texas corporation engaged in the sale and distribution of retail groceries. It maintains its principal office at Lubbock, Texas, and also operates and maintains seven retail grocery stores in and around Amarillo, Potter County, Texas, which are the only stores involved in the proceeding. During the 12 months preceding the issuance of the complaint herein, in the course and conduct of its operation at Amarillo, Texas, Respondent purchased and received goods valued in excess of $50,000 from suppliers located directly outside the State of Texas, and during the same period the Respondent derived gross revenue in excess of $500,000 from its Amarillo operation.

The complaint alleges, the Respondent admits, and I find that, at all times material herein, the Respondent was an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the Respondent admits, and I find that the Union is, and has been at all material times herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Cast of Characters*

The Respondent operates a chain of 33 retail grocery stores in west Texas, including the seven stores here involved which may be called the Amarillo division. Max Smithey is the grocery supervisor for the Amarillo division. Bernard Phelps is the meat market supervisor for the division. Jackie Pierce is the assistant meat director for the entire Company. Max Tipton is the companywide grocery supervisor.

The seven stores involved here shall be referred to by store number and their supervisors as relevant here are:

Store 522	Dennis Daniel, manager
Store 524	Jim Rush, manager
Store 526	Walter Boldin, assistant manager
	Dick Bennett, assistant manager
	Worlin Robinson, head meatcutter
Store 527	Roy Burch, manager
	Lewis Pena, assistant manager
	Steve Johns, head meatcutter
	Max Ward, head meatcutter
Store 529	No supervisor involved
Store 530	Fred McCain, manager
Store 533	Jim Selman, manager
	Charles Sooter, head meatcutter

The union activity giving rise to the alleged unfair labor practices here commenced among the meat department employees in late May when they received a notice that the method of evaluating them for pay raises would

[5] Numerous witnesses testified in this hearing and frequently the testimony of witnesses cannot be reconciled. The facts found herein are based on the record as a whole and on my observation of the witnesses. Credibility resolutions have been derived from such record and observation with due regard for the logic of probability under the teachings of the Supreme Court in *N.L.R.B.* v. *Walton Manufacturing Company & Logansville Pants Co.*, 369 U.S. 404 (1962).

be changed. Max Ward, a meatcutter in Store 527, assumed a leading role in this activity and contacted both the Teamsters and the Retail Clerks Union. By mid-July the grocery department employees were also the subject of the Union's organizing activities.

The General Counsel contends that from the time the Respondent learned of the union activity in mid-June it implemented a program to cut back in man-hours, thus eliminating certain "third man" positions and providing a vehicle to transfer employees to other stores in order to get rid of the union activists. The Respondent contends that the union activity took place during a period of significant readjustment in the Amarillo division which was necessitated by its higher labor costs there in comparison with its other two divisions.

Most of the independent 8(a)(1) allegations are supported by the testimony of the discharged employees and will be considered in conjunction with the discharges.

B. *Preliminary Statement Concerning the Evidence and the Mode of Analysis Thereof*

At the conclusion of the hearing testimony and evidence in this case, there was uncontroverted testimony from several witnesses presented by the General Counsel with respect to statements made to them by admitted supervisors of the Respondent which clearly interfered with, restrained, and coerced these employees in the exercise of their Section 7 rights. The Respondent advances no reason for its failure to call as witnesses several of its supervisory personnel, or former supervisors, to whom this 8(a)(1) conduct was attributed and some of whom played significant roles in the events surrounding the discharges. The General Counsel requests that I draw inferences that had the Respondent presented these witnesses their testimony would have been adverse to the Respondent's case. It has been established law since the early days of the Board that such inference is warranted. *Fruehauf Trailer Company*, 1 NLRB 68 (1935), enforcement denied 85 F.2d 391 (6th Cir. 1936), remanded 301 U.S. 49 (1937).

The unfair labor practices established by this uncontroverted and credible testimony are substantial indeed and create an ambiance of hostility toward the Union and those employees supporting the Union in which all the evidence must be analyzed and assessed. The discharges considered hereafter occurred in an atmosphere of additional egregious unfair labor practices, as found herein, and, with the exception of Supervisor Max Ward, fall into three categories: (1) asserted misconduct or work deficiencies, (2) to reduce the Employer's labor cost, and (3) constructive discharges.

In analyzing all the evidence relevant to the discharges of those employees in the first two categories to determine causality, I am guided by the Board's decision in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), wherein it adopted the test of causality used by the Supreme Court in *Mt. Healthy City School District Board of Education* v. *Doyle*, 429 U.S. 274 (1977), and *Village of Arlington Heights* v. *Metropolitan Housing Corp. et al.*, 429 U.S. 252 (1977).

In accordance therewith, the test of causation used here requires that the "General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. "Where this has been established the employer must then carry the burden of demonstrating the action would have taken place even in the absence of the protected conduct. *Wright Line, supra*. As advised therein, where the employer has failed to carry its burden, no quantitative analysis of the effect of the unlawful cause will be made. Although a distinction might be raised between the cases in the first two categories, the first being pretext cases and the second dual-motive cases, the Board has obviated "the perceivable significance" between the two.

C. *The Discharges and Consideration of 8(a)(1) Allegations*

1. Max Ward

As heretofore noted, Ward was the prime instigator of the union activity from its inception in late May or early June, at which time he was a nonsupervisory meatcutter at Store 527. Around June 14, Ward was promoted to head meatcutter or market manager,[6] a supervisory position.[7] After his promotion, Ward continued his active support for the Union. About June 27, the date of the first meeting with the Retail Clerks, Assistant Meat Director Jackie Pierce read a statement to Ward and Store Manager Burch entitled "Instructions to Supervisors" wherein it was stated, "[S]upervisors have no legally protected right to belong to a Union. The Company may fire any supervisor who is not loyal to the Company and who encourages employees to belong to a Union or who joins the Union himself."[8] Notwithstanding, Ward continued his active support for the Union and solicited employees to sign union cards and attend union meetings. On July 11, Ward sent the Respondent a notarized letter advising it that he intended to support the Union during his off-duty hours.

The events leading up to Ward's discharge are not in dispute. On July 13, Ward attended a union meeting, at which time he spoke to the group of some 50 employees from both the market and grocery departments. Ward exhorted the employees to join the Union and, according to Head Meatcutter Charles Sooter, whom I credit in this regard, stated that he knew there were employees against the Union, that "he would not tolerate it if he knew who they [were]," and that he would do everything in his power to get the Union in.

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[6] The terms "head meat cutter" and "market manager" are used interchangably.

[7] The General Counsel appears to concede that market managers are Sec. 2(11) supervisors although the Board has made no determination in this case. Ward had previously been a market manager at another of the Respondent's stores. Moreover, record evidence establishes that market managers or head meatcutters at the Respondent's stores have and exercise the authority to, on behalf of the Employer, exercise independent judgment for making work assignments, granting time off, and suspending employees, which are indicia sufficient to make them Sec. 2(11) supervisors.

[8] The same statement was apparently read to all supervisory personnel in the Amarillo division. The statement also admonished the supervisors not to make any statements that could be interpreted as a threat or a promise of benefits.

The following day Ward went on coffeebreak with Lynda Brownlee, a grocery checker at Store 526, at which time he solicited her to sign a union card. When she refused, he accused her of being a spy for the Company and told her that squealers were going to be the first ones to be fired after the Union got in.[9] There were three other meat department employees present. According to Ward, Brownlee was crying when she left the drug store where they were taking their coffeebreak. Apparently Brownlee reported Ward's comments to Meat Supervisor Phelps. According to Phelps, he conferred with Grocery Supervisor Smithey and the decision was made to discharge Ward for his remarks to Brownlee, which remarks Phelps viewed as a threat. The following day, July 15, Ward was terminated by Phelps, who told him that they had "evidence" against him.[10]

The General Counsel argues that Ward's promotion, the reprimands, and his discharge are all part of the concerted effort by the Employer to rid itself of the "prime mover" of union activities. Neither Ward's promotion to supervisor or the reprimands were alleged or litigated as unfair labor practices. Accordingly, I decline to consider either to have been discriminatorily motivated. Moreover, there is nothing in this record to suggest that Ward was not free to refuse the promotion to market manager and remain within the protection of the Act. It is true that the Board determines the supervisory status of "head meat cutters" or "market managers" on a case-by-case basis and the determination depends on the facts of each case. Here, Ward knew at least by June 27 that the Respondent considered him to be a supervisor and requested that he refrain from union activity. This the Respondent clearly had a right to do. The General Counsel concedes that a supervisor is generally considered to owe his loyalty to his employer. However, he may not be disciplined for refusing to engage in unfair labor practices or antiunion conduct against employees,[11] or in some instances disciplined as an integral part of the employer's efforts to stop unionism among his employees.[12]

The Respondent contends that it discharged Ward because of the threat made to Brownlee in conjunction with Ward's soliciting her to sign a union card, and not because he refused to harass or ascertain and terminate union supporters. There is no evidence that the Respondent, who knew of Ward's union activities, ever solicited him to discriminate against union adherents. I do not credit Ward's testimony that on July 3 or 4 Pierce and Phelps told him he could no longer refuse to tell the Company who the union adherents were. Pierce established that he was not even in Amarillo on either day and Phelps credibly testified that he did not see Ward either day because he was busy at the grand opening of Store 533.

In my view, Ward gave the Respondent no alternative but to discharge him for continuing to actively participate in the employees' union activities and threatening reprisals against those employees who did not support the Union. It is irrelevant that Ward had no supervisory authority over Brownlee or that he was not in a position to implement the threat. It is also irrelevant that the Respondent wanted to get rid of Ward because of his union activity. It is well settled that supervisors have no protected right to support a union organizing campaign and the least an employer can expect from a supervisor is neutrality in a union election. *N.L.R.B.* v. *North Arkansas Electric Cooperative, Inc.*, 446 F.2d 602 (8th Cir. 1971). Accordingly, Ward's discharge did not violate the Act.

2. Priscilla Sain

Sain worked for the Respondent about 1-1/2 years as a meatwrapper in the market at Store 529 under the supervision of Market Manager Steve Johns. A week before her discharge, Division Meat Director Phelps informed Sain that she was to be transferred to Store 526. Sain objected because that store had only one meatwrapper and this would put a hardship on her because of her weak wrists. Phelps then agreed to transfer her to Store 533 where she would work with other meatwrappers.

Sain commenced work at Store 533 on Sunday and was terminated the following Saturday, July 16, according to the Respondent, for tardiness and taking too long on break. Store 533 Market Manager Charles Sooter scheduled Sain to report to work at 8 a.m. each day that week. Sain complained to Sooter that the schedule would work a hardship on her, and, according to Sain, Sooter agreed that she could report between 8 and 8:30 a.m.[13] Sain reported to work between 8 a.m. and 8:30 a.m. each day except Saturday when she reported at 8:32 a.m. according to her timecard.

During the week Sain worked at Store 533 Meat Director Phelps talked with her about the Union and read her an antiunion letter from the Employer. While talking with her, Phelps told her the Company knew the ones going to the union meetings.[14] I find, as alleged, that Phelps' statement constituted an impression of surveillance of union meetings. Also during that week Sooter told Sain she could not go on break with other market

[9] Ward admitted the foregoing. Brownlee did not testify.

[10] On July 14, Ward's market was visited by Meat Supervisors Pierce and Phelps and Ward was given a written reprimand for having too much fat in his hamburger and for not cutting sirloins in accordance with "United Meat Systems Manual." On July 15, Ward was given another written reprimand for not keeping his "pull back" sheets in accordance with the manual. While it appears that prior to this time the Respondent had not given written reprimands for failure to comply with the manual—and the record indicates most market managers did not adhere strictly to it—it does not appear that these reprimands, or the alleged derelictions giving rise to them, formed any basis for the discharge of Ward. Since the reprimands were not alleged or litigated as independent unfair labor practices it is unnecessary to discuss them further at this time.

[11] See *Talladega Cotton Factory, Inc.*, 106 NLRB 295 (1953), enfd. 213 F.2d 208 (5th Cir. 1954).

[12] *Buddies Supermarkets*, 223 NLRB 950 (1976), and *Murray Goluh, Seluryn Golub and Albert Golub d/b/a Golub Bros. Concessions*, 140 NLRB 120 (1958).

[13] I do not credit Sooter's testimony that he told Sain she would have to adhere to the schedule until he could work something out. Although Sain reported to work after 8 a.m. each day, it was not until Saturday, the day of her discharge, that Sooter mentioned her tardiness. Had he denied her request he would not have waited 5 days to point out that she was being tardy.

[14] Phelps admitted talking with Sain but denied that he told her the Company knew who was attending the union meetings. Of course, the Company did know who attended the meetings because some of its supervisors also attended. I do not credit Phelps' denial of this statement.

employees and on the day before her discharge he told her she could not take breaks with the checkers.

On the day of Sain's discharge, Meat Supervisor Phelps went to Store 533 and told Sain she was being transferred to Store 524 to replace the meatwrapper there whose husband had been made market manager.[15] Sain again called Phelps' attention to her handicap of working in a one-wrapper store and Phelps told her he would try to put her back in a two-wrapper market as soon as possible. Sain then went on break and Sooter testified she was gone 35 minutes instead of the 15 minutes allowed.

Later that afternoon Sooter told Sain that Phelps had told him to terminate her for tardiness and taking too long on break. Sain testified that Sooter told her he tried to explain to Phelps that he had an arrangement about her schedule. Sooter denied the latter statement and testified that he and Phelps had discussed Sain's tardiness and long breaks while on coffeebreak that morning and that later Phelps had called and asked about Sain's attitude, at which time Sooter told Phelps that he would terminate her.

Steve Johns, Sain's supervisor at Store 529, testified that Sain was a satisfactory employee there and that her starting time had been 8:30 a.m. and a few minutes tardiness was not a matter of concern. Johns admitted that he knew of Sain's prounion sentiments, as did Phelps and Sooter.

Shedding light on the Respondent's motives in discharging Sain is the testimony of meatcutter Larry Mills, who was called as a witness by the Respondent. According to Mills, the week after Sain's discharge Sooter told him the Company was looking for a reason to get rid of Sain because she was a union supporter. Sooter tactilely admitted the conversation but could not remember what was said.

Mark Soltis, an alleged discriminatee herein, testified that Store 533 Manager Jim Selman told him they had fired Sain primarily because of her tardiness, but that they knew she had talked to other employees about the Union and that was also a reason. In the same conversation he told Soltis that he (Soltis) "could see what happened to her."[16] Selman was not called by the Respondent to testify and no reason was given for its failure to do so, although substantial and damaging testimony was given involving Selman's conduct. Although Selman was not employed by the Respondent at the time of the hearing, it was established that he was still in the Amarillo area and no contention is made that the Respondent could not locate him.

I find that the Respondent seized upon Sain's asserted tardiness during the week preceding her discharge and the asserted long coffeebreak on the day of her discharge to discharge her for her activities on behalf of the Union. Sain was admittedly a good employee and it appears that the Respondent had no problems with her work habits until her transfer to Store 533. Sain had been tardy, by the Respondent's version, each day that week. However, nothing was said to her about it until the day of her discharge. It is also interesting to note that this was to be Sain's last day at Store 533; Phelps had already directed her to report to Store 524 the following week. While the foregoing is sufficient to find a violation, the comments of Sooter and Selman to employees Mills and Soltis the following week discloses that Sain's union activities were the motivating factor in her discharge.

[15] The Respondent apparently had a policy against relatives working in the same store.

[16] It is alleged that this conversation constituted an impression of surveillance and a threat of reprisals. I so find.

3. Van Bollen

Bollen was employed by the Respondent for about 10 months as a stocker/checker at Stores 526 and 530 where his overall work was satisfactory and his relationship with the Respondent's clientele was outstanding. He requested, and was granted, a transfer to Store 533 for its grand opening on June 27. He was terminated on July 23 in a reduction in force necessitated by the reduced volume of business after the grand opening. The Respondent contends he was choosen for discharge, notwithstanding his greater seniority, because he was less efficient.

It is undisputed that on July 13 Store Manager Selman informed Bollen of a union meeting that night and asked him to attend and report back to him the activity there. The following day Selman inquired of Bollen if he had gone to the meeting and, upon being told that he had, Selman asked Bollen what had been said. Bollen appears to have evaded the question. It is also undisputed that on July 15 Selman told Bollen that if the Union came in there would be a reduction in the number of employees. A few days later Selman told Bollen that some good might come out of the Union, but again indicated that it would bring about a reduction in employees. About the same time, Selman told Bollen that there were some union representatives at the drug store where some employees took their coffeebreak and that if he were seen talking to them he would be fired. About the same day Bollen told Selman that the more he considered the Union the more inclined he was to vote for it.

The foregoing is not denied. Accordingly, I find that by Selman's conduct described above the Respondent solicited Bollen to spy on and report the union activities of its employees, threatened Bollen with a reduction in force for selecting the Union, and created the impression of surveillance of the employees' union activities.

The grand opening of Store 533 commenced on June 27, at which time the store had 47 employees, both full and part time. It appears from the testimony of Smithey and Tipton that it was the Respondent's practice in opening a new store to transfer some experienced employees from other stores to the new store for its "grand opening" in addition to the new employees it hired for the greater volume of business usually generated by the promotional campaign in connection therewith. After the "grand opening" when the volume of business leveled off, needless to say, fewer employees were required and layoffs or terminations were generally necessary and this proved to be true at Store 533. However, the Respondent admits that it usually did not terminate the employees it had transferred from other stores when it became nec-

essary to reduce the force, but would transfer them back to their original stores.

On July 23 when Bollen checked the work schedule his name was not on it. A note accompanying the schedule stated that a reduction in force was necessary and employees whose name did not appear on the schedule were terminated. Five other employees were terminated from Store 533 at or about the same time as Bollen, some of whom it developed had signed union cards and some of whom had not. Similarly, some employees retained by the Respondent supported the Union and some did not.

There was much testimony concerning Bollen's ability as a stocker. According to Smithey, Bollen was nicknamed "slow motion" by his fellow employees because he was slow in stocking his aisle. However, this was true in the other stores where Bollen had worked and in which he was utilized to a great extent as a checker in which job he excelled. Thus, assuming that Bollen was not the most efficient stocker, this fact was known throughout his employment and the Respondent had retained him because of his other desirable abilities. It was not until the union activity among the grocery employees gained momentum and the Respondent learned of Bollen's support for the Union that it could no longer tolerate his inefficiency.

While it is true that a reduction in the work force of Store 533 was undoubtedly necessary at this time, I find that the Respondent has not carried its burden of establishing that it would have selected Bollen for discharge even absent his union activity. It could have transferred him to the front of Store 533 or to another store as had been its practice in the past. Although Assistant Store Manager Barry Hawkins testified, equivocally, that he had talked with Bollen about being slow, he also admitted that Bollen was an efficient employee. In any event the Respondent does not contend that Bollen, an employee of relatively long tenure, was ever put on notice that his work must improve or he would be terminated.

Here the Respondent knew of Bollen's union activities and he refused to cooperate with Selman by reporting the activity at the meetings. This is all that Respondent learned about Bollen after his transfer to Store 533. It already knew that he was not its fastest stocker but had other qualities which it desired. Accordingly, I find the Respondent discharged Bollen to discourage union activity among its employees.

4. Donna Bates

Donna Bates was employed by the Respondent as a checker at Store 524 in January and worked there under the supervision of Jim Rush, store manager, until about July 24. In late June, Bates asked Division Meat Director Phelps about transferring to the meat department, at which time Phelps told her, in effect, that he was opposed to such transfers because "it caused hard feelings." Shortly thereafter, Bates learned of a possible opening in the delicatessen at Store 529. On July 6, she asked Store 529 Market Manager Steve Johns about the job and indicated that she wanted it when it became available. The following day she told Rush she had requested the job. Rush told her it was probably a mistake and later explained that the job would not last more than 6 months because the meat department was in a "mess." Rush told her they were screening all employees carefully to find out who was "for or against."[17] The foregoing statements by Rush are alleged and found to constitute a threat of reprisal and an impression of surveillance.

A couple of weeks later, about July 22, Rush told Bates that Steve Johns had called and said that she could go to work in the delicatessen on Monday, July 25. Bates asked Rush if she could return to Store 524 in the event the job at the Store 529 did not work out, and Rush assured her that she could.

Bates reported to Johns on Monday, July 25, and worked her scheduled 4 hours. When she reported to work the following day her timecard was not in the rack and upon inquiry Johns told her she was laid off in a cutback in all the stores. Bates called Rush about her old job and Rush told her he was having to lay off also and she would probably have been laid off at Store 524 had she remained there.

The Respondent contends that it had no knowledge of Bates' union activity and, in any event, she was laid off for economic reasons in a reduction in force. As to company knowledge of her union activity, Bates testified without contradiction that, about the first of July, Market Manager Worlin Robinson asked her if she was for the Union and she replied affirmatively.[18] Contrary to the Respondent's contention, it is not necessary to show by direct evidence that the supervisors who participated in the discharge knew of Bates' union activity where, as here, it is shown that one supervisor knew of her union sentiments and practically all of the Respondent's supervisors engaged in widespread unfair labor practices, including threats, interrogation, and the impression of surveillance. Accordingly, I find and conclude that Bates' prounion sentiments was known to the supervisors who discharged her.

The General Counsel contends that Bates was transferred to a different store and discharged pursuant to a pattern established by the Respondent to get rid of union adherents under the guise of reducing its work force to reduce labor costs. Phelps testified that transfers from the grocery department to the meat department were supposed to be approved by the area supervisors of both departments. However, no approval for Bates' transfer by Phelps or Smithey was obtained by Johns or Rush, each testifying that he thought the other had obtained approval. Phelps testified that he saw Bates at Store 529 on July 25 and asked Johns what she was doing there and told Johns they could not keep her because they were cutting back hours in the meat department.

The Respondent's evidence established that in midyear its labor cost factor in the Amarillo division was approximately 1 percentage point higher than in its other two divisions. The Respondent argues that in attempting to

[17] The petition for an election in the meat department had been filed on July 1. No petition had been filed in the grocery department at this time.

[18] Although there were several 8(a)(1) allegations involving Robinson, the Respondent did not call Robinson to testify or offer an explanation as to why it did not. Accordingly, I conclude that Robinson's testimony would not have supported the Respondent's position in this case.

reduce this labor cost factor it had an inordinate 186 terminations, both voluntary and involuntary, between July and October. During the same period of time it hired 119 employees.

I agree with the General Counsel that Bates, who was a satisfactory employee and a known union adherent, was discharged because of her union advocacy. It is clear that the Respondent could have achieved its goal to reduce man-hours by natural attrition and that it was not necessary to involuntarily terminate any employee. This is not to say that it could not weed out inefficient employees and replace them with employees who worked more efficiently, for this is one method of reducing labor costs. However, Bates was a satisfactory employee of some 6 months' tenure. I do not credit the Respondent's references to her tardiness as a factor in her termination. There is no evidence of such tardiness other than Rush's reference to it in his testimony. She had never been counseled concerning tardiness and Rush did not advise Johns prior to her transfer of such problem. It is well settled that, where an employer's reason for discharge is found to be false, the Board may infer that there was another reason, one the employer sought to hide; i.e., an unlawful one. This inference is clearly appropriate here, where the Employer has engaged in extensive unfair labor practices, some of which are undenied. Accordingly, I find and conclude that Bates' discharge violated Section 8(a)(3) of the Act.

5. Rick Stanberry

Stanberry was employed at Store 527 for about 5 months as a stocker prior to his discharge on July 25 at the direction of Store Manager Burch. The Respondent contends that Stanberry was terminated for woefully inadequate work performance resulting from his laziness and lack of interest in his job and that it had no knowledge of Stanberry's union sentiments.

Store 527 was apparently the nucleus of the union activity. As previously stated, Max Ward, who initiated the union activity, was employed at Store 527 as were six of the other alleged discriminatees. Store Manager Burch testified that Union Representative Bill Glass was frequently in the store and parking lot disturbing employees and interfering with their work, which resulted in numerous confrontations between himself and Glass when he asked him to leave. Burch further testified that he saw Stanberry talking with Glass on more than one occasion.

Store 527 was also the site of much of the antiunion conduct alleged in the complaint to violate Section 8(a)(1). It is undisputed that on June 29 or 30 Store Manager Burch summoned several employees, including Stanberry, Dennis Cowan, Calvin Vaughn, and possibly Russell Lyle, to the back of the store and for an hour and a half or so discussed the Union with them. Assistant Store Manager Lewis Pena was also present from time to time during the discussion.

According to Stanberry, Burch initiated the discussion by stating that he knew something was going on and he wanted to know about it. He then started talking about unions in general and the Retail Clerks Union in particular. As might be expected, there were as many different versions of what Burch said as there were witnesses who testified to the meeting. Stanberry testified that Burch related some personal experiences he had while working at a union store on the west coast and told them that if the Union came in "they" would have to cut back on the number of employees in order to meet higher wage demands. According to Dennis Cowan, in response to a question Burch said that on the west coast they had to lay off employees so they could stay in business. Stanberry further testified that Burch said he would arrange a meeting with Max Smithey, area supervisor, and try to get better wages and working conditions. Burch continued that if the Union came in Snell, the owner, would lock the doors testifying that "before he let the union in he would just close up." According to Burch, in response to a question concerning the Company's closing stores, he replied, "I guess they are big enough to do what they want to do." However, Cowan testified that, in response to the question Burch assured the employeees that Snell would not close the store because he was not the kind of man to kick people out of work. Burch admitted that he told the employees that if wages were increased production would have to increase.

Relying principally on the testimony of Stanberry, the General Counsel alleges that Burch's statements at the meeting constitute an impression of surveillance; a threat of discharge or reprisals; a threat to go out of business; a promise of better wages and benefits; and a threat to reduce the number of employees, all in violation of Section 8(a)(1). While I have not set forth all conflicting versions of testimony relating to this meeting, I have considered all such testimony. During this 1-1/2 hour discussion, primarily concerning the Union although other matters were discussed, it is likely that Burch made all the comments remembered by those present. I find Stanberry to be an extremely credible witness who did not deliberately embellish upon the truth. Accordingly, I find that Burch made the statements attributed to him by Stanberry. Moreover, even if these statements were made under the guise of telling the employees what happened when other stores were unionized on the west coast, it would still constitute coercive interference with employees' Section 7 rights, for, in the context of all the other unfair labor practices found here, the inference is clear that Burch was saying the same thing would happen in Amarillo. Therefore, I find the violations as alleged.

As noted above, the Respondent contends that Stanberry was fired for inefficiency and taking too many breaks. The General Counsel argues that Stanberry was selected for discharge because he was a union adherent. On July 25, Stanberry and Russell Lyle found their timecards missing from the rack when they attempted to clock out at the end of their shift. They went to the office where third man[19] Chuck Durbin informed them that he hated to do the dirty work but Burch had instructed him to tell them "we can't use you anymore."

[19] It appears that the position classified as third man might be characterized as a second assistant manager and was found to be a nonsupervisory position. However, when neither the manager nor assistant manager was present at the store the third man was charged with the proper operation of the store.

Upon inquiry as to why, Durbin told them it was their lack of production. They then clocked out.[20] According to Stanberry, the following day he telephoned Area Supervisor Smithey, who informed him he was laid off in a budget cut "because we wasn't selling enough to make our wages."

First, with respect to company knowledge of Stanberry's union activity, Burch admitted that he observed Stanberry talking with Union Representative Glass on more than one occasion. Stanberry signed a union authorization card on July 6, and, while there is no direct evidence that any management official was informed of this or any other union activity by Stanberry, I am convinced that by July 25 the Respondent had a fairly accurate count of which employees supported the Union. This finding is supported by the fact that the Respondent engaged in numerous unlawful acts, including surveillance and interrogation, to identify the union adherents and rid itself of them.

There was much testimony concerning Stanberry's work performance. After commencing work at United in March, it appears that Stanberry completed his 2-week training program satisfactorily and was given the responsibility of ordering for his aisle, the bake aisle. The testimony relating to his deficiencies concerned the period of June and July, after the union campaign commenced among the grocery employees.

According to Burch and Pena, Stanberry constantly failed to maintain his aisle in accordance with repeated instructions from both men. On the other hand, Stanberry testified that on one occasion Burch instructed all the stockers on his stocking techniques and, aside from general comments, i.e., "lets get going," Stanberry was never individually criticized or warned about his job performance. Stanberry was transferred from the bake aisle to the soap aisle and then to the paper aisle and each, according to Burch, was progressively easier to stock. About July 8, Stanberry, Lyle, and another stocker were relieved of their duties to order for their aisles, but no reason was given to them at the time. Stanberry admitted that, after Pena began ordering for his aisle, there were "holes" in it due to the fact that Pena did not order the correct merchandise.

In addition to Burch and Pena, employees Cowan and Sharon Sanders testified that Stanberry's aisle had "holes" in it and that he took excessive breaks, both in number and length. Cowan also testified that he had heard Pena tell Stanberry to "get to work," or words to that effect, on a number of occasions.

As noted above, there was a great deal of testimony concerning Stanberry's performance, most of which was general in nature and apparently dealt with the period of June and July. It appears that Stanberry's "lack of interest" in his job became a concern to the Respondent only after union activity commenced among the grocery employees.

As already indicated, Stanberry's testimony was given forcefully and with a ring of truth, and I credit him where his testimony is in conflict with Burch, Pena, and Cowan. Stanberry may well not have been efficient in his work performance. However, the Respondent tolerated these deficiencies until the height of the union campaign when it elected to terminate him without warning. This occurred in the midst of numerous other unfair labor practices, many of which are not denied. Accordingly, I find that the Respondent discharged Stanberry for his union activities.

6. Claude Murray

Murray entered the Respondent's employ at Store 526 in November 1976 as a stocker. He was hired by Store Manager Ronnie Sinclair, who was personally acquainted with him and knew of his 8 years' experience in the grocery business. Around July 12, Sinclair was replaced by Mike Stevens, who was transferred from the Respondent's Lubbock division. Murray attended at least two union meetings and on July 18 he signed a union card. According to Murray, several rank-and-file employees sought information from him about the Union because they knew that he had previously belonged to the Union, and on one occasion he discussed this with Assistant Store manager Walter Bolden. Murray also testified that on one occasion Bolden was in the immediate vicinity when Union Representative Barber gave him additional union cards.[21]

According to Murray, as he was leaving work on August 1 Stevens told him that he had been told to cut back on employees and that he was starting with him because he was not "properly producing." Contrary to Stevens, Murray testified that Stevens had never spoken to him until the day he was terminated and that he had never been told that his production was inadequate.

Stevens made the decision to terminate Murray when his labor costs rose 8 percent for the week ending July 30. Insofar as the record reveals, Stevens was unaware of the divisionwide move to reduce labor costs as purportedly decided by Smithey in mid-June. While it is true the record reveals an 8.5-percent labor cost for 1 week for Steven's store, his labor costs for the quarter was 6.97, well within the acceptable 7-percent figure.

Stevens' testimony was not convincing. He testified that Murray worked the dog food aisle, whereas Murray testified credibly that he worked the bake aisle. The only specific criticism of Murray by Stevens was that he spent too much time "facing" the cans on his aisle. There is no contention that Stevens consulted with Bolden, the assistant manager who had observed Murray's work for several months, before deciding to select him for discharge for lack of productivity. Although Bolden was called to testify he did not testify with respect to Murray's work.

I find Murray's discharge, when viewed against the background of this case, to be part of the pattern which clearly emerges on this record which discloses that the Respondent was reacting to the advent of the Union in its grocery department with the unfair labor practices

[20] Although Assistant Manager Lewis Pena testified that he observed Lyle working in the store several days later, I am persuaded by Stanberry's testimony and that of Burch that Pena was mistaken and that Lyle was fired the same day as Stanberry.

[21] Bolden denied that he observed Murray talking with a union organizer and that Murray ever indicated to him that he was for the Union.

found herein. As the General Counsel argues in his brief, Murray's discharge differs from the others found violative herein only to the extent that it was apparently not orchestrated by higher management.

I have no problem concluding that the Respondent had knowledge of Murray's prounion sentiment based on Murray's discussions of the Union with Bolden, his attendance at two union meetings, and his open discussion of the Union with fellow employees.

Murray was a relatively long-term employee and there is no contention that his work, quality or quantity, was less than satisfactory until 2 weeks before his discharge.

I am convinced and I find that the discharge of Murray was motivated by the Respondent's objective to rid itself of union adherents in order to discourage the protected activities of its employees in violation of Section 8(a)(3) and (1) of the Act.

7. Tanna Stoops

The record discloses that Stoops was employed by the Respondent at Store 529 as a checker on June 7, and some 10 days later was transferred to the meat department as a wrapper under the supervision of Steve Johns, market manager. During the week of June 22, she was transferred to the market at Store 526 as a wrapper under the supervision of Worlin Robinson. She worked there until July 29, when she was discharged by Robinson for leaving meat out of the cooler while she went on break.

Stoops' union activity started upon her transfer to the meat department when she learned of the union activity in the market from Max Ward. Stoops attended the initial union meeting conducted by the Teamsters about June 20, and signed a union card for that Union. She also attended the initial union meeting for the Retail Clerks about June 23, where she also signed a union card. It is undisputed that her supervisor, Steve Johns, saw Stoops at both union meetings and that she told her last supervisor, Worlin Robinson, that she had attended the meetings. It is clear that Stoops promoted the Union in other ways by talking with employees about the Union and by giving cards to an employee for distribution at another store.

About July 8, Division Market Supervisor Bernard Phelps came to Stoops in the market and called her into the "back room" where he handed her an antiunion letter prepared by the Company and asked her to read it. During the course of this meeting Phelps told Stoops that if the Union came in it did not mean that United would negotiate a contract and that it did not mean the employees would be able to keep their jobs. In response to leading questions by counsel, Phelps testified that he could not recall making any statement to Stoops while he did remember taking the letter to her and either reading it to her or having her read it. I credit Stoops' version of this July 8 incident. Her testimony was straightforward and free from embellishment, whereas Phelps appeared tense and interested only in denying any act which might be found unlawful. Further bolstering Stoops' credibility is the fact that she freely admitted the conduct charged by the Respondent for which it assertedly discharged her.

The foregoing conversation between Phelps and Stoops is alleged in the complaint to violate Section 8(a)(1) of the Act, since the words conveyed a threat of reprisal and a threat of futility for the employees if they selected the Union. Having found that the conversation occurred as alleged by the General Counsel, I find and conclude that the Respondent violated Section 8(a)(1) by such conduct.

On July 29, at or about 2:30 p.m., Stoops was engaged in wrapping meat. She asked Robinson if she could take her "break" at that time. He gave her permission. As she was returning to the wrapping area to place the meat left on the conveyer belt under refrigeration while she was gone, she "thought" she saw Lucy Mooney, another wrapper, returning from lunch. On the assumption that Mooney would, in accordance with standard practice in the meat department, continue wrapping the exposed meat, she left for her "break." When she returned 15 minutes later, Robinson met her in the market area and "told me to go home because he couldn't use me any more because I had left the meat."

The above facts are not in dispute. Also not in dispute is the Company's policy that meat should not be left unrefrigerated "any longer than possible" (Phelps). Pierce, on the other hand, attempted to convey the impression that it should not happen at all. Store Manager Roy Burch stated that he had seen Stoops on four or five other occasions leave meat unrefrigerated, and initially stated that he had admonished her about it. On further examination he conceded that he had spoken to Robinson about it, but not to Stoops.[22] Mary Jane Walker, the meatwrapper who had trained Stoops, testified that she had left meat in an "unrefrigerated well" while on break.[23]

On the facts here, I am convinced, and I find and conclude, in accord with Stoops' testimony, that she had never before left meat unrefrigerated or been admonished about such act. While there is no dispute that leaving meat unrefrigerated is detrimental and a breach of standard procedure, there is no contention that the meat was affected on this occasion. Robinson's precipitous discharge of Stoops, without giving her an opportunity to respond, is indicative of the Respondent's desire to "get rid" of this employee. I am convinced, and I find and conclude, that the Respondent seized upon this rule's infraction to discharge Stoops because of her known support for the Union and to discourage concerted activity by its employees.

8. Karen Renfroe

Karen Renfroe entered the Respondent's employ for the second time on May 25,[24] when she was hired as a

[22] Robinson did not testify at the hearing. Although not in the Employer's employ at the time, the Respondent advanced no reason for not calling him as a witness, but attempted to establish its defense with respect to Stoops' discharge by the hearsay testimony of Burch.

[23] There was much testimony to the effect that, contrary to Walker, the "well" to which she referred was refrigerated. On the facts of this case, I need not resolve this credibility conflict.

[24] The record is unclear as to when and where she worked during her first employment.

clerk in the bakery section of Store 530 under the supervision of Store Manager Fred McCain. This section had recently converted from a full-service to a self-service section and this store was one of two stores in the Amarillo division with a bakery. The only other employee in this section was the baker, Bobby Lancaster.

Renfroe attended the union meeting on July 13, at which time she signed a union authorization card. The following day Market Manager Gonzales asked her what she thought of the union meeting, to which she replied that she "was all for it."[25] Sometime later in July, Store Manager Fred McCain asked both Renfroe and Lancaster what they thought about the Union. Renfroe's reply was that "it can do good and it can do bad." McCain did not testify; therefore, the foregoing is undenied. I find and conclude that McCain's question to Renfroe and Lancaster constitutes coercive interrogation as alleged in the complaint. Contrary to the Respondent's contention in its brief, in light of the numerous violations found herein, such questioning cannot be viewed "more in the nature of a passing comment than in the tone of informational interrogation."

The record indicates that on or about August 5 the Respondent granted some pay raises. Both Renfroe and Lancaster were dissatisfied with the amount of their raises and so informed Store Manager Ed Stanton along with their notice of intention to quit, Renfroe in 1 week and Lancaster in 2 weeks. Stanton informed them they would have to discuss the matter of the salary raises with Area Supervisor Phelps. However, within a day or two, Renfroe informed Stanton that she wished to continue working since her husband was on strike against his employer and was not receiving a paycheck. Renfroe testified that Stanton replied that he was glad to hear that because he did not want the bakery to close, but to inform Phelps of her decision.

The following Wednesday, Renfroe discussed her desire for more money with Phelps, who informed her that he could not afford to pay more money and, moreover, they were considering closing the bakery at Store 530 because business was not good. It is undisputed that Renfroe then asked if she could be transferred to the bakery section at Store 529, the only remaining bakery in the division, and indicated that she wanted only bakery work. According to Phelps, he told her he could not use her there because he had a "full crew at that time." Renfroe's version was that he said he would have to "wait and see." On August 11, the day before the bakery at Store 530 closed, Renfroe again asked Phelps about going to the bakery at Store 529 and he told her he could not let her work there because her sister was the bakery manager there. This conversation was not addressed in Phelps' testimony. It appears that the Respondent did have a rather loosely enforced policy requiring approval by its home office for relatives to work together. On cross-examination, Renfroe admitted that two of her sisters were already working in the bakery at Store 529. The record further indicates that there were about eight other instances where relatives were working together. Renfroe's last day of employment was August 12. Although the Respondent hired at least four new employees in the bakery at Store 529 within the following several months, it never contacted Renfroe with respect to such employment. On the other hand, there is no evidence that Renfroe asked to be considered for future employment when an opening occurred.

The General Counsel contends in the first instance that the Respondent's decision to close the bakery at Store 530 was based, "in part," on its desire to "rid itself of another union adherent," or, in the alternative, assuming a valid business reason for closing the bakery, that "it was selective in its decision to deny Ms. Renfroe the opportunity to transfer to the new store." The Respondent contends that Renfroe quit; and that "she was not rehired and the company was under no obligation to rehire her." Additionally, it argues there is no substantial record evidence that Respondent had knowledge of Renfroe's union activity.

Addressing first the issue of company knowledge, it is clear from the undisputed testimony of Renfroe concerning the July 14 conversation with Market Manager Gonzales that the Respondent knew she attended the July 13 union meeting, and that she told Gonzales that she "was all for it." It is well settled that knowledge of an employee's union activity by any supervisor or management official, although not directly involved in subsequent action affecting the employee's job, may be imputed to the supervisors who were so involved. This inference is clearly warranted here in view of the numerous instances of impressions of surveillance and interrogation. Accordingly, I find that the Respondent knew of Renfroe's union sentiment.

With respect to the contention that Renfroe quit and the Respondent was under no obligation to rehire her, the record is clear that she attempted to rescind her notice of quit and remain in the Respondent's employ, which was denied her because the decision had been made to close the bakery section of Store 530, and the record does not establish that the Respondent had any bakery positions available at Store 529. The Respondent is correct, to a point, that it had no obligation to permit Renfroe to withdraw her notice of resignation or to rehire her. This is true only if such refusal was for reasons totally unrelated to her union or protected concerted activity.

Now, addressing the General Counsel's first contention, there is absolutely no record evidence to support the argument that the Respondent's decision to discontinue its bakery operation at Store 530 was motivated by anything other than valid business considerations. Such finding would have to be based on mere conjecture. Notwithstanding the Respondent's admittedly strong opposition, and as found herein as an unlawful opposition, to the Union, I am not persuaded that it would be influenced to make this kind of operational change merely to rid itself of one union adherent. Indeed, the record here demonstrates that the Respondent's *modus operandi* was to seize upon asserted individual misconduct or deficiencies to rid itself of individual union activities.

[25] The foregoing, while not denied since Gonzales did not testify, is not alleged as a specific violation of the Act and was apparently offered to establish company knowledge of Renfroe's union activity. No finding will be made thereon.

The above findings lead to consideration of the General Counsel's alternative contention that Renfroe was denied a transfer to Store 529 because of her prounion sentiments. As heretofore found, there is no evidence to dispute the Respondent's contention that it had no positions available for bakery clerks at Store 529 at the time it closed the bakery at Store 530. The General Counsel argues that the fact that Lancaster, a baker, was transferred to Store 529 to work his last weeks' notice, and thereafter was permitted to rescind his notice and remain in the Respondent's employ at Store 529 with his father, also a baker, is evidence of disparate treatment as to both the right to transfer and to work in the same store with a relative. There is no evidence with respect to Lancasters' union sentiments. The Respondent does not advance as a defense to its action the fact that Renfroe already had at least one sister and apparently two sisters, working in the bakery at Store 529.

The Respondent contends, and there is no evidence to dispute, that it transferred Lancaster to Store 529, and permitted him to remain there working with his father, because of his skill as a baker. It appears that, upon closing the bakery at Store 530, the bakery at Store 529 would have to increase production in order to supply bakery products to all stores in the division. Accordingly, another baker was needed. Thus, the final question is whether, on the facts here, the Respondent had reason to believe that Renfroe was interested in any future opening occurring in the bakery at Store 529, and if so whether it failed to seek her out and offer such position to her when it became available because of her union activities.

While the issue is not free of some doubt in light of the Respondent's pervasive and egregious unfair labor practices, I find and conclude that the General Counsel has failed to prove by a preponderance of credible evidence that the Respondent's actions with respect to Renfroe were discriminatorily motivated.

Having found that the decision to close the bakery at Store 530 was unrelated to any union activity, it follows that the elimination of Renfroe's job there was not discriminatory. According to Renfroe, the only reason given to her by Phelps for declining her request for bakery work at Store 529 was that her sister was bakery manager there and it was against company policy to have relatives working together without "home office" approval. As noted above, Phelps testified at some length concerning many complaint allegations, but did not address this August 11 discussion with Renfroe. Whether this was an oversight on the part of counsel or whether the Respondent does not dispute Renfroe's version is not clear from the record or brief. I am persuaded that Phelps told Renfroe that there were no jobs available in the bakery at Store 529 at that time, and, assuming, as I must, that he also alluded to the company policy regarding employment of relatives, it is clear that Renfroe made no request to be considered for future employment or request that approval be sought for her to work at Store 529 with her sister or sisters. While it is not entirely clear from the record, it appears that Renfroe had two sisters working in the bakery at Store 529. Thus, one may conclude that she was aware of waivers against relatives working together, and, having observed Renfroe on the witness stand, I am convinced that she would have pointed this fact out to Phelps had that been the only asserted reason for not transferring her.

Accordingly, I find and conclude that Renfroe was not terminated for discriminatory reasons, and recommend that the complaint be dismissed with respect to this allegation.

9. Mark Soltis

The complaint alleges that the Respondent discriminated against Soltis by reducing his hours of work, withholding part of a promised wage increase, reducing his wages, demoting him from "third man" to stocker, and terminating him on September 7.

Soltis entered the Respondent's employ in November 1976 as a stocker at Store 529 earning $4.25 per hour. He received periodic increases up to $4.59 per hour by June 27, when, at his request, he was promoted to "third man" and transferred to the new store, number 533, under the supervision of Jim Selman, store manager, and Barry Hawkins, assistant manager, at which time his pay was raised to $4.69 per hour. Soltis was raised to $5 an hour about August 5 and demoted to stocker and transferred to Store 527 on September 3 at a rate of $4.75 per hour. Three days later he was terminated by Store Manager Roy Burch for alleged insubordination when Burch attempted to discuss with him employee complaints about his soliciting them on working time and his inability to get along with other employees.

Before considering the alleged 8(a)(3) discrimination against Soltis, consideration and findings of fact will be made as to numerous alleged 8(a)(1) violations based on the testimony of Soltis. Soltis testified to almost daily conversations about the Union with store manager Selman from about July 11 to July 25 which are alleged as 8(a)(1) violations. The Respondent attacks Soltis credibility contending that his testimony is contradictory and that much of it is repudiated by the General Counsel's witnesses. However, the Respondent did not call Selman as a witness and argued in its brief that Selman was as readily available to the General Counsel as he was to the Respondent. Counsel apparently does not perceive the adversary trial burdens of the parties. I find nothing in Soltis' testimony requiring that I discredit him, particularly on matters that are not disputed. The Respondent asserts that it terminated Selman on November 6 because of charges alleging Selman's unlawful antiunion activity. Such charges also involved other supervisors who were not terminated, which suggests that the Respondent was convinced of Selman's proclivity to interfere with employees' Section 7 rights.

Soltis first learned of the union activity about July 11, when Selman informed stocker Doug Lamascus and Soltis that he (Selman) was aware that the Union was trying to organize and he wanted to say a few things. Selman told them that if the Union were selected the Company would fire all the employees, and those who wanted to work would be rehired and those who did not work would go on strike. He continued that Travis Lincecum, the owner, would never sign a contract. As alleged, I find the foregoing to violate Section 8(a)(1) of

the Act because it contained a threat to employees of discharge or other reprisals, a threat of futility its employees to select the Union, and a threat not to bargain in good faith.

The following day several employees, including Soltis, were having coffee in the office with Selman. One of the employees mentioned a "credit" union. Selman apparently did not hear "credit" and "leaned back in his chair," and essentially reiterated the comments of the day before, to the effect that Lincecum would never sign a contract and that employees who struck would be fired, and employees who wanted to work and did not go on strike would be rehired. I find a repeat of the violation found above.

About July 13, Soltis observed Selman talking with two other employees after which Selman came to Soltis and told him:

> I'm going to tell you exactly what I've told them. You are not to talk to the Union people on company time. Your coffee breaks are paid for by the Company, therefore that is company time. You are not to talk to union people on store property. Anyone seen talking to a Union representative, that is grounds for immediate termination.

He added that Soltis, as his assistant, had a duty to inform him if he observed employees talking to a union representative. The Respondent argues that Soltis contradicted himself on cross-examination when he testified that Selman had told him that he could solicit on coffee-breaks. It is not clear when Selman informed Soltis that he could solicit on break. However, such does not detract from the July 13 oral announcement of a clearly overly broad and invalid no-solicitation rule. I so find. In addition, I find a threat to discharge for engaging in protected activity and a solicitation to report the union activities of other employees.

On July 14, Selman again approached Soltis and told him that if the Union were voted in they would probably not have a produce manager anymore and the "third man" would have that job in addition to his regular duties. As alleged, I find the foregoing to constitute a threat to reduce the number of employees if they selected the Union.

When Soltis reported for work on July 16, at or about noon, Selman approached him and said, "We fired your friend back in market." Soltis asked who, and was told Priscilla Sain had been fired for being late for work; that even union supporters would be expected to toe the line; and that he knew she had been going to union meetings as well as talking to employees and "you can see what happened to her." The Respondent violated the Act as alleged by telling its employees that Sain had been fired for her union activity and by a thinly veiled threat that the same would happen to other union adherents.

Also on July 16, Selman told Soltis that their production rates had been increased from $45 to $50 per man-hour to $60 per man-hour and that they would increase $5 per week until United was comparable with Furr's (an organized grocery chain). Selman continued, "Now the employees will see what its like to work for a union store." Selman also indicated that "third men" would be relieved of their administrative duties and that their hours would be reduced. To some extent Max Smithey corroborated Soltis, for he testified that about this time the Company decided as part of its plan to reduce labor costs to also reduce the hours of "third men" from 48 to 40 hours per week.[26] I find the foregoing to constitute a threat to increase production and a threat to reduce hours because of the employees' union activities in violation of Section 8(a)(1) of the Act.

Around July 19, Selman told Soltis that he had a list and knew who was for the Union and who was attending union meetings. He continued that people were up from Lubbock (the home office), and they knew. The foregoing constitutes an impression of surveillance and a threat to surviel the union activities of employees.

On July 21 and 25, respectively, Selman told Soltis that he knew Van Bollen and Soltis were for the Union. Soltis had signed a card on July 19. I find from the foregoing an impression of surveillance of employees' union activities.

About July 21, employee Carl Davis visited Store 533 with a union representative. Soltis observed them and advised Assistant Manager Barry Hawkins, who indicated he needed to inform Area Supervisor Bernard Phelps. According to Soltis, Hawkins could not reach Phelps and called Charles Sooter, market manager at Davis' store, and informed him that Davis was there with a union representative and they needed to do something about it and inform Phelps. Afterwards, Soltis asked Hawkins if they would "trump" up a charge against Davis to get rid of him because he was prounion. According to Soltis, Hawkins replied, "Yes, and if you know whats good for you, don't repeat it." Sooter, as did Hawkins, denied the telephone conversation and Hawkins denied admitting they would trump up charges to get rid of Davis. Hawkins admitted an incident where Davis came into the store with a union organizer, but denied anything further. As noted above, I find Soltis to be a credible witness while Hawkins' demeanor left something to be desired. Hawkins' denials of all unlawful conduct was not convincing. Accordingly, I find Hawkins violated Section 8(a)(1) by telling Soltis that the Respondent would trump up charges to get rid of Davis because he was prounion.

Turning now to the allegation concerning the reduction in Soltis' working hours and the withholding of part of a promised wage increase, the facts are not in serious issue. As discussed above, around mid-July there were rumors that the hours of "third men" would be reduced. Soltis was informed of this and complained that a reduction in hours would hurt him financially. Selman told him he could expect a raise around August 1, so it may not hurt him too much. About August 5, according to Soltis, Assistant Manager Barry Hawkins told him that his raise would probably be $5 to $5.50 an hour. When he received his first check reflecting the raise on August 12, he and Hawkins "figured out" that he was raised to $5 an hour; Chuck Durbin, "third man" at Store 524 was

[26] This is alleged as a violation of Sec. 8(a)(3) and will be considered *infra*.

raised to $5.50 per hour. The remaining five third men were paid $250 per week for 48 hours. The Respondent contends that the raises were based on the grocery experience evaluation. Thereafter, Durbin and the other "third men" continued to work 48 hours per week. Soltis was reduced to about 40 hours per week for the 3 weeks that he remained a third man.

The Respondent contends that it reduced Soltis' hours because the volume at Store 533 had dropped to about $30,000 per week and it was attempting to reduce its labor costs. It also contends that the volume at Store 524 had dropped to about that figure. However, Durbin, the third man there, continued with one exception to work 48 hours per week. On this record it appears that Durbin was not a supporter of the Union.

On the facts here, including company knowledge of Soltis' strong union activities and the Respondent's proclivity to discriminate against employees because of their union activity, I find that, contrary to hours worked by the "third men" in all the other stores, Soltis was singled out for the reduction in hours because of his union support. Soltis had expressed to both Smithey and Selman that he was having "financial problems," and thus the Respondent knew this would be a particularly appropriate way in which to retaliate against Soltis.

The same cannot be said with respect to the amount of pay raise Soltis received on August 1. First, the General Counsel has not sustained his burden of showing, as alleged, that Soltis was promised a specific amount. From the context of the August 5 conversation with Hawkins, it is clear that Hawkins was merely speculating or conjecturing as to the possible amount of the increase. This certainly does not constitute a promise of a raise to $5.50 per hour. Furthermore, the General Counsel does not contend, and in any event has not shown, that the Respondent's use of the grocery experience evaluation was discriminatorily motivated or applied to Soltis. Accordingly, I recommend that this allegation be dismissed.

Lastly, considering the allegations that the Respondent unlawfully demoted and reduced Soltis' pay and thereafter discharged him, the record presents many factual issues to be resolved. According to Max Smithey, the Respondent had been considering measures with respect to the "third man" situation in Amarillo since mid-July. It was decided that the two stores with the lowest volume, Stores 524 and 533, would not have a "third man" position and the two "third men" with lowest seniority, Soltis and Durbin, would be left "in limbo." In late August, Smithey gave Soltis, the senior of the two, the opportunity to transfer to a store in Plainview or Perrytown, Texas, located about 50 and 80 miles, respectively, from Amarillo, as a third man, or the option of "stepping down" to a stocker. It is clear that the Respondent had every reason to believe that Soltis could not accept the transfer to Plainview or Perrytown since he was a student at West Texas College located about 15 miles from Amarillo, and a transfer would interrupt his education. In any event, Soltis accepted the stocker position and was told by Smithey he would have to locate one for him.

On Saturday, August 31, Smithey visited Store 533 and in the presence of Selman accused Soltis of spreading rumors that he had been demoted because of his union activity and told him he wanted to hear no more of those rumors.

According to Roy Burch, he telephoned Smithey on August 31 regarding the need for a stocker, and Smithey told him he could send Soltis over but that Soltis had "some problems" with the Company. Selman informed Soltis that he was to be transferred to Store 527 the following day.

Soltis reported to Store 527 on Sunday where "third man" Todd was in charge. Burch was on vacation Sunday and Monday and Pena was not present at the store on Sunday. On Tuesday, Soltis' day off, he went to the store and talked with Selman about scheduling him so as not to interfere with his school schedule and extracted a promise from Burch that he would see what he could do.

The following day when Soltis reported for work his timecard was gone from the rack and upon inquiry of Burch about the card Burch asked Soltis to accompany himself and Pena to the back room. Soltis' version, and that of Burch and Pena, as to what occurred there differs dramatically. According to Soltis, Burch told him he was being terminated and upon Soltis asking why Burch told him that he knew "good and well" what for, and continued, "You know the sins you've committed." Burch told him that he had violated company policy. Soltis asked Burch if he were being fired for discussing the Union on coffeebreak. Burch told him that coffeebreak was company time and he was not allowed to discuss the Union on company time. When Soltis pressed Burch for a reason he replied, "Laziness."

Burch testified that on Tuesday two employees, Mark Mathis and Joey Detton, came to him and stated that they wanted to sign a statement complaining that on Monday Soltis had asked them to sign union cards on company time. Burch prepared the statement which they allegedly signed and Burch witnessed. Mathis and Detton did not testify. Stocker Dennis Cowan testified that he complained about harassment from Soltis concerning Soltis "bossing him around."

According to Burch, he opened the interview with Soltis by telling him that he wanted to know what had been going on while he was away and told Soltis that from what he had heard he had some "real disturbed people." Soltis replied, "I have just been doing my job." An argument ensued. Burch told Soltis that he had come to the store as a stocker. Soltis said, "You are going to fire me ain't you?" Burch told him he was just trying to talk to him, and Soltis continued, asking if they were going to fire him because he was for the Union. Burch told him, "These are your statements," and said he was just trying to get to the bottom of what had happened. After further discussion in the same vein, Burch told Soltis that he was insubordinate and that "it looks like we are going to have to come to a parting of the ways or something." When pressed for a reason for the termination Burch told Soltis that he was lazy.

At the hearing Burch testified that he did not intend to fire Soltis when the interview started, based on the complaints that had been lodged against him, but when he

could not talk with Soltis he fired him for insubordination.

Based on my analysis of the record concerning the demotion and discharge of Soltis, I am convinced and find that, under the circumstances herein, i.e., the demotion and discharge of a relatively long-term and satisfactory employee for asserted insubordination arising out of, what I am convinced was, a setup, the Respondent violated Section 8(a)(3) and (1) of the Act. While there may have been legitimate business reasons for the Respondent to eliminate some "third man" position in Amarillo, I find that the General Counsel has sustained his burden of establishing that Soltis was singled out for demotion because of his support for the Union.

It is unclear from the Respondent's brief and oral comments at the hearing whether its affirmative defense turns upon its contention that Soltis violated, what the Respondent asserts to be, a valid no-solicitation rule by soliciting employees Mathis and Detton to sign a union card during working time or solely upon Soltis' asserted insubordination to Burch on September 7. First, assuming the existence of a valid no-solicitation rule, Burch testified that he had observed discussion about the Union among the employees and also union organizers in the store and there is no evidence that disciplinary action was taken against employees so involved. Secondly, there is no admissible evidence to establish that Soltis actually solicited the two employees to sign cards on working time, since they were not called as witnesses, and Soltis denied such activity, but only that such report was made to the Respondent. Thus, to the extent that the Respondent contends that the discharge was for violation of its no-solicitation rule, it has established only that it had reason to believe a violation of the rule had occurred and Soltis' testimonial denial is sufficient to establish that such solicitation did not in fact occur.

Even if one accepts Burch's version of the September 7 interview with Soltis, it is clear that Burch was "baiting" Soltis. He declined to tell Soltis the nature of the complaints about him and, instead, asked Soltis what had been going on while he was away and told him he had some "real disturbed people." I am convinced and find that Burch terminated Soltis because of his union activities.

10. Diane Dickinson

Diane Dickinson was employed by the Respondent as a checker at Store 524 for a little more than 3 weeks when she was terminated on September 16 for an accumulation of three insufficient funds personal checks she had given to the Company. There is no dispute as to the pertinent facts preceding the discharge. During Dickinson's brief employment she issued three personal checks to the Company in the name of Mrs. C. C. Crowe, her husband's stage pseudonym, which were returned by the bank marked "insufficient funds." While Dickinson was employed under the name "Diane Dickinson," her application for employment indicated that she also used the name "Mrs. C. C. Crowe."

According to Area Grocery Supervisor Max Smithey, the Company's procedure for collecting insufficient fund checks was to write a letter to the address shown on the check and if there was no response to send a certified letter. Dickinson's checks gave only a post office address and there was no telephone number, nor was there a listing for her in the telephone directory.

It appears that the "check man," Pete Moore, was not immediately aware of the fact that "Mrs. C. C. Crowe" and Diane Dickinson, their employee was one and the same. On September 15, Moore telephoned Dickinson at home and told her he had "a check" that had been returned and she agreed to pick it up the next day. The following day when she reported for work, Area Supervisor Smithey and General Grocery Supervisor Max Tipton met her at the timeclock where Smithey presented her with three returned checks and terminated her with the understanding that she would pick the checks up with her last paycheck the following day.

The General Counsel contends that the Respondent seized upon these unfortunate incidents as a pretext to discharge Dickinson because of her union activity. Dickinson testified that she became active for the Union shortly after she was employed and attended three or four union meetings and talked to and solicited employees to sign authorization cards and signed such card herself on August 24. As company knowledge of such activity, the General Counsel appears to rely on an incident occurring on September 13, when fellow employee, Scott Spivey, asked Dickinson if she had attended the union meeting the night before. Apparently Dickinson did not answer. Dickinson asserts that Max Tipton was nearby and heard the remarks and she subsequently saw him talking with Spivey.

Smithey testified to the effect that company policy was to terminate employees for giving bad checks to the Company and subsequently it discharged Dan Green, the Company's observer, at the December 7 election for giving bad checks.

I find Dickinson's testimony that she was unaware of any of the checks being returned to be incredible. One of the checks was about 30 days old and Dickinson had received a monthly bank statement which she had apparently not opened. This fabrication casts doubt also on her testimony with regard to the extent of her union activity and company knowledge thereof.

In short, I find and conclude that Dickinson was discharged for the reason asserted by the Respondent and that her union activities were not a factor in the decision to terminate her. Accordingly, I recommend that the complaint be dismissed as to Dickinson.

11. Judy Grove

Grove entered the Respondent's employ on July 28, as a checker at Store 527 under the supervision of Roy Burch and Louis Pena. Grove testified that she immediately became aware of the union activity and attended union meetings, discussed the Union with other employees, and called employees on the telephone. However, it was not until September 20, 2 days before her discharge, that she signed a union card.

Grove was terminated on September 22 after an incident in which she was alleged to have been "rude" to a customer. According to the Respondent, only one of

many incidents in which such misfeasance or malfeasance of her duty occurred. The record is clear that at or about 7 p.m. that date a Doctor Martin was checked out by Grove at which time Dr. Martin felt that Grove had treated him rudely in both the manner in which she checked him out and her attitude and action when he brought to her attention the fact that she had overcharged him by 20 cents for his purchase. He reported his version of these events to Assistant Manager Louis Pena and returned the purchases that he had made, with the exception of a package of cigars which he had opened, and obtained the check he had given for the purchase. While there was much testimony concerning what really transpired at the "checkout" stand, in my opinion the crucial question in what facts were reported to management and whether management discharged Grove for this conduct or seized upon it as a pretext to discharge her for her union activities. Dr. Martin, the customer, credibly testified to the effect that he reported his version of Grove's attitude and actions to Pena and rescinded his purchases. The question now is: was this conduct under all the circumstances conduct for which the Respondent normally discharged employees or did the Respondent seize upon this report to discharge Grove in order to discourage union activity.

As with some of the other alleged discriminatees, Grove's embellishment of some facts in her testimony does not make the decision as to her easier. First, I am convinced that Grove did not engage in the extensive union activity from early in her employment as described by her. I am persuaded that if she had engaged in such extensive union activity she would not have waited until September 20 to sign a card, particularly since the Union made a demand for recognition on August 4 claiming majority status, and filed its petition for an election on August 5. Further, Grove testified that on September 20, when she returned from lunch at which time her husband had told her that a union representative had been trying to get in touch with her at home, Roy Burch asked her if she had gone to the union meeting the night before. She told him that she had not because her husband had been sick. Burch asked if she knew who had attended. In her testimony she first said no, but then named at least two employees who had attended. Grove's pretrial affidavit states that she told Burch she did not know who attended the meeting. Burch admits discussing the Union with Grove on more than one occasion, but denies interrogating her concerning her attendance at a union meeting or the attendance of other employees. He testified that in such discussions she had indicated she did not like the Union.

As heretofore noted, Burch was not an impressive witness in his denials of the specific allegations against him. In this instance he admitted discussing the Union with Grove, but does not give his version of what was said. On balance, I credit Grove that he interrogated her concerning the union meeting, and that such interrogation was coercive and violated Section 8(a)(1) of the Act, as alleged.

Turning now to the discharge. Burch testified that Grove was a good checker when first employed, but that during her later employment he received a number of complaints about her attitude toward customers. According to Burch, and contrary to Grove, Burch testified that he talked with her about this on four or five occasions. Head checker Sharon Sanders testified that she had received several complaints about Groves' "being hateful" to customers. She further testified that she received three to four complaints a day about various checkers. Thus, it appears that Grove was not alone among the checkers in having complaints lodged against her.

Be that as it may, on September 22, Groves' conduct toward the customer, Martin, was such that Martin rescinded his purchases and is clearly conduct about which the Respondent should be justifiably concerned. The Respondent contends that Grove was fired for her rudeness to Martin and her refusal to "give her side of the story" to Pena when he called her to the office to talk to her about the incident.

Grove testified that when Pena came to her register to retrieve Martin's check, she asked if she had done anything wrong and Pena told her "no." Shortly thereafter, he summoned her to the office and told her he had called Burch at home and they had decided to terminate her for being rude to a customer. Grove replied that the customer was rude to her.

Pena's testimony in this regard is quite different. He testified that he called Grove to the office to inquire why she had not brought the incident with Martin to his attention. Grove replied that she had "taken care of it." According to Pena, she indicated that she did not want to talk further about the matter and he terminated her. Pena talked with Burch on the telephone before he summoned Grove to the office and Burch told him to take care of the matter any way he wanted. Burch testified that Pena telephoned him about the incident and told him that he was going to terminate Grove for the incident, and Burch agreed. At the hearing Pena testified that he would not have fired Grove had she responded differently to his questions.

I have a number of problems with Pena's version of these events. First, while there appears to be a policy that checkers report overcharges in excess of $1 to a supervisor, the overcharge here was only 20 cents. In any event, Grove knew that the entire incident with Martin had already been reported to Pena by Martin. Thus, contrary to Pena's testimony, I find that Pena did not call Grove to the office merely to ascertain why she had not brought the incident to his attention. It is clear from Burch's testimony, and in conflict with Pena's, that the decision had been made to terminate Grove prior to the time Pena called her to the office. This tends to lend credence to Grove's version of what was said in the office; i.e., that Pena told her he had talked with Burch and they had decided to terminate her for being rude to a customer. She was not permitted to give her version of the incident.

It is evident that the Respondent knew or suspected that Grove was prounion based on Burch's interrogation of her on September 20, and her response that she had not gone to the union meeting because her husband was sick.

As noted above, Grove's conduct toward customer Martin on September 20, as reported to Pena by Martin, is certainly conduct about which the Employer should be concerned. The question here is whether Pena discharged Grove for that reason or whether he and Burch seized upon the incident to discharge her because of her union activities. It appears that customer complaints about employees are rather common and the record does not disclose that others had been fired because of such complaints. Considering all the facts here, I am convinced and find that the Respondent seized upon this complaint to terminate Grove in order to discourage union activity among its employees. The promptness with which Pena reacted to this incident by reporting it to Burch and deciding to discharge her without any further investigation of the incident or obtaining Grove's version compels the conclusion that the Respondent was not interested in determining the real egregiousness of Grove's conduct, but was merely searching for a pretext to rid itself of another union adherent. I find the discharge of Grove violates Section 8(a)(3) and (1) of the Act, as alleged.

12. Fay Bonner

Bonner entered the Respondent's employ as a checker at Store 527 in June, under the supervision of Roy Burch and Louis Pena. Bonner became active for the Union soon after she commenced work. She attended union meetings and signed a card at the July 13 meeting. She testified that she handed out union cards and discussed the Union with other employees while on break.

On July 13, she initiated a conversation about the Union with Roy Burch. Burch took her to the back room of the store where the discussion continued and Burch told her about his experiences with a Union at another store. During the course of this conversation, Bonner testified that Burch asked her how she felt about the Union and she responded that her father and husband had always been Union. According to Bonner he told her that if United went union they would close and hire new employees firing those who had signed up for the Union. Burch asked her if she would take fellow employee Lynda Brownlee to the union meeting that night and she replied that she would but that she had to work late. Brownlee did attend the meeting but did not go with Bonner.

Burch admits a July 13 conversation about the Union with Bonner wherein he expressed his views against the Union based on his experience on the west coast at a union store. He also admits that he asked Bonner if she would take Brownlee to the union meeting, but denies making the statements asserted by Bonner which are here alleged as violations of Section 8(a)(1). The statements made by Burch on July 13 are similar to those which have been found herein to have been made to other employees by him while discussing the effect the union had on a store in which he had previously worked. Based on Bonner's testimonial demeanor, I credit her version and find that Burch's remarks constituted coercive interrogation; a threat of discharge or other reprisals and a threat to go out of business because of the Union, all of which violates Section 8(a)(1) of the Act. I find nothing in the conversation which constitutes an impression of surveillance of employees union activities.

The facts leading up to Bonner's separation from the Company are brief. While there was much testimony concerning Bonner's work habits and efficiency, some to the effect that she was a good checker and other to the effect that her performance was impaired by marital or emotional problems, such does not appear to be a contributing factor to her separation. In any event she was given a 75-cent-per-hour raise in August, which suggests that at that time she was, at least, a satisfactory employee.

At times relevant here, Bonner was scheduled to work part time on Wednesdays and Saturdays. On Wednesday, September 21, she worked about an hour and was sent home by Assistant Manager Pena, according to Bonner because business was slow but, according to Pena, she had made some mistakes.

Shortly before 9 p.m. on Thursday, Bonner telephoned the store and, in the absence of Burch, talked with Pena and requested to be off on Saturday. According to Bonner, Pena told her that he saw no reason why she could not be off. On the contrary, Pena testified that he told her he would have to check and if she were not needed she could have the day off. Pena admits that Bonner was not told to check back. Pena testified he relayed Bonner's request to Burch the following day and Burch indicated that they needed her to work on Saturday and that he would take care of it.

On Friday, Bonner went to the store with Judy Grove, as discussed above, to pick up her paycheck at which time she talked with both Pena and Burch but nothing was said by her or them concerning her request to be off on Saturday. According to head checker Sharon Sanders, Bonner told her that she was going to be off the next day and upon her inquiry as to whether she had permission, Bonner's initial response was "no," but she then said that she had told Pena.

The events of Saturday morning and the conduct of Burch are somewhat perplexing. Bonner was at the store at 9 a.m. on Saturday, according to her, to purchase groceries and cash a check. She admits that she probably glanced at the work schedule as she had on Friday, and that her name still appeared there as scheduled to work on Saturday. This does not appear to be significant since changes in the schedule after it was posted was not customarily reflected thereon. Bonner asked Burch about cashing a check and was told that the Armored truck had not come. She then got a shopping cart and selected some items for purchase and checked out with a checker named Janet or Janice.[27] She then went back to obtain an item that she had forgotten and checked that out with Betty Simonson (Todd). Simonson, who was no longer employed by the Respondent at the time of the hearing, testified that Bonner remarked to her, "I guess you heard I got fired." Simonson replied, "no, when," and Bonner said, "Oh, not yet, but I'm going to be." After which Bonner left the store. Simonson testified that she report-

[27] The record reveals that a checker named Janet Van Camp was hired on September 9.

ed these remarks to Burch. Bonner denies that she made these remarks to Simonson.

Burch testified that he saw Bonner in the store shortly after 9 a.m. on Saturday and talked with her. He observed her take a shopping cart and proceed to select groceries and check out and leave the store. He said nothing to Bonner about being scheduled to work. Testifying as to his thought processes as he observed Bonner in the store, Burch stated: "I didn't approve of her actions, but I was going to let her lead the situation. She looked at the schedule, stood by it, she knew it was not my duty to remind her of something she had seen five minutes earlier." Burch asserted that they needed Bonner to work that day. After Bonner left the store Burch discussed her failure to work with Pena. Pena assured Burch that he had not given Bonner the day off as she had requested.

According to Bonner, on Sunday, Judy Grove, a former employee, told her that she (Bonner) had been fired. On Monday she telephoned Burch and told him that she had heard she had been terminated. Burch replied, "you were not fired you walked out . . . you didn't come to work." She told him she had permission from Pena to be off on Saturday. Burch told her that he was the manager and she would take her orders from him. Burch's version of this conversation differs from Bonner's in that when Bonner told him she had heard that she was fired he replied that was news to him since he was the store manager and insisted Bonner was still on the payroll. Burch stated Bonner then told him she did not want to work for United anymore.

There is no question that Bonner was originally scheduled to work on Saturdays as one of the two checkers scheduled to open the store at 9 a.m. Her visit to the store on Saturday for the purpose she indicated is consistent with conduct of an employee who, at least, honestly believes that she has permission to be off from work. On the other hand, Burch's conduct toward Bonner is not consistent with that of a manager who observes an employee in the store conducting herself as a customer whom he believes should be working. Burch had been informed by Pena that Bonner had requested the day off and had told Pena that he needed her to work but that he would take care of the matter. Thus, when Bonner commenced conducting herself as a customer instead of going to work, as Burch contends she should have, it should have been apparent to Burch that there was a possible misunderstanding on the part of Bonner or himself as to whether she was supposed to work. This is particularly true since Bonner had made her request to Pena and Burch had not taken care of it as he told Pena he would.

While, as Burch contends, he may not have had a duty to remind Bonner that she was scheduled to work, under the circumstances here it appears that some communication with Bonner concerning her working would have been appropriate and reasonable. This is particularly true if, as Burch contends, he really needed her to work.

It is evident from Burch's own testimony concerning his thought processes as he observed Bonner in the store that he was in effect laying a trap for her which he could seize upon as a reason to discharge her. I am convinced and find that the Respondent, by Burch, deliberately contrived, at the very least, an ambiguous situation concerning Bonner's desire to be off work on Saturday, and seized upon it to discharge her because of her support for the Union, which was admittedly known to it. Accordingly, I find that Bonner's discharge violated Section 8(a)(3) and (1) of the Act.

13. Ronnie Bouknight

Bouknight was employed by the Respondent in May as a meatcutter at Store 522, and at times relevant here worked under the immediate supervision of Market Manager Wayne Poynor. According to Bouknight, he attended two union meetings and signed an authorization card in July. Wayne Poynor, a witness for the General Counsel, admitted that about September 21 he told Bouknight that they were aware that he had attended the union meeting on September 19, and that he was going to be watched.

The General Counsel contends that the Respondent, by Meat Director Pierce, engaged in oral harassment of Bouknight between September 21 and October 1 because of his union activities and that such harassment created intolerable working conditions for Bouknight, and that his quitting his employment on October 1 constituted a constructive discharge in violation of Section 8(a)(3) and (1). The Respondent contends that Bouknight voluntarily quit his employment and any instructions he received from Pierce or Poynor, at Pierce's direction, were not motivated by any union activity.

Pierce testified that he was in Amarillo to help improve the market operations there so the profit factor would be favorable with its other divisions. According to Pierce, on September 21, he and Area Meat Supervisor Phelps inspected the market at Store 522 where he observed Bouknight trimming meat too closely and the meat wrapper improperly wrapping meat. Pierce advised Poynor of his observations and told him to watch Bouknight's trimming. Bouknight's versions of this incident is that Pierce stood behind him for about 45 minutes and then complained to both Bouknight and Poynor that Bouknight was wasting meat by trimming too closely. Bouknight also recalled that the meat wrapper had to rewrap some meat because it was improperly wrapped.

On September 23, Pierce returned to Store 522 and after watching Bouknight for about 10 minutes took some scraps from the bone barrel and placed them on a counter. Pierce told Poynor that his production was not what it should be. However, he said nothing to Bouknight.

Pierce's next visit to Store 522 was the afternoon of September 26, while Poynor was away. According to Bouknight, Pierce rummaged through the bone barrell and pulled out some pork scraps and shook them in his face and told him pork should not be cut with a saw. Pierce then left before Bouknight could tell him that Poynor had cut the meat. Except for shaking the trimmings in Bouknight's face, Pierce confirmed this incident.

The final incident relied on by the General Counsel as oral harassment occurred on September 29 when Pierce,

Max Tipton, and Phelps visited the store. Pierce observed Bouknight for a while and then complained that he was improperly cutting the meat, specifically the manner in which he had broken down three sides of beef. Pierce told Tipton, "this man is costing you money." According to Bouknight, he asked Pierce to step to the back of the market where he asked if he was looking for a reason to fire him and complained about the cutback in man-hours. Pierce denied that he was looking for a reason to fire Bouknight and told him the gross profit problem was being handled in other areas and could be handled in Amarillo. Two days later Bouknight informed Phelps that he was quitting.

There was much testimony concerning the extent to which the Respondent's meat markets were governed by the "United Meat Systems Manual," which was supposed to be available at each market. An analysis of this testimony reveals that at least some of the market managers had not read the manual as well as many of its meatcutters. The testimony also reveals that meat might be cut differently in every market to best appeal to the clientele of that market. The market manager, in conjunction with Phelps, decided the cuts of meat to be made at each market.

The issues here present close questions. It is clear from the evidence, including the Respondent's records, that its profit factor in the markets in the Amarillo division were not as good as in the other divisions. Thus, a legitimate business reason existed for the Respondent to attempt to improve the meat market profit in Amarillo by sending its assistant systemswide meat manager there. However, the methods the Respondent used to achieve its goal must be analyzed against the recent election in the market which the Union won and the pervasive union animus as found herein which the Respondent has demonstrated.

Bouknight testified that he had several years of experience as a meatcutter but had not been so engaged for about 18 months preceding his employment with Respondent. He had also not received any specific training at United aside from day-to-day instructions from the market manager. Bouknight does not contend that Pierce's criticism of his trimming too much fat off the sirloin might not be warranted, but argues that he was cutting meat the way he was told. Nor is it denied that Pierce, as the meat director, had the right to change the method or manner in which meat was cut. Bouknight had a tendency in his testimony to exaggerate Pierce's remarks to him and about him, with respect to his tone and attitude.

While the question is not free of some doubt in view of the Respondent's propensity to violate the Act, I find on the facts here that the General Counsel has failed to sustain his burden of proof that Bouknight was harassed by Pierce because of his union activities and that his separation from Respondent's employ on October 8 constitutes a constructive discharge for union activities in violation of Section 8(a)(3) of the Act.

First, Pierce's criticism of Bouknight is not shown to have been pretextual or delivered in a manner designed to harass him because of his union activities and to make his working conditions intolerable. On these facts, I do not believe that an inference is warranted as argued by the General Counsel that the Respondent either "promulgated new rules or more strictly enforced old ones in an attempt to deliberately create such an unpleasant working environment that an employee was forced to quit." *C. F. Fidelity Telephone Company*, 236 NLRB 166 (1978).

Even assuming that an inference is warranted that Pierce's conduct here could reasonably be construed to have been motivated by union animus, in my opinion the interference with Bouknight's Section 7 rights was not egregious enough to make his working conditions so intolerable that he could no longer work there.

14. Mary Jane Walker

Walker commenced work for the Respondent as a meat wrapper at Store 528 in August 1976, and worked primarily under the supervision of Steve Johns. Around the first of September, Walker was transferred to the market at Store 527 under the supervision of Worlin Robinson. According to Pierce, in an effort to cutback on man-hours in the market to improve profit factors, the decision was made to place its three best wrappers in the three highest volume stores. Walker was the least senior of the three best wrappers. Store 529 was also one of the three highest volume stores. However, the Respondent let the wrappers choose the store they wanted in the order of seniority. A more senior wrapper, Miller, chose Store 529 which necessitated the transfer of Walker to Store 527.

Walker was one of the employees who became active for the Union very early in the campaign and after the election in the market was elected to the Union's negotiating committee. In any event the Respondent admits knowledge that Walker was an active prounionist. The Respondent also admits that Walker was one of its best wrappers as suggested by its characterizing her as one of its three best wrappers in the Amarillo division.

Walker was clearly not happy with her transfer to Store 527 where the meat wrapping equipment was "antiquated" and was equipment with which Walker was unfamiliar. As a result, Walker was not as efficient as she had been at Store 529. When she complained about the equipment, she was told that the Company was in the process of obtaining new equipment. Walker was absent for 10 days in mid-September and she returned on September 26. On September 28, Meat Director Pierce observed her working for a few minutes and told her she was not producing like she used to. Walker told Pierce this could be attributed to the old equipment. According to Walker, Pierce told her to stop double wrapping roasts, as she had been instructed to do. He stared at her and told her to increase her production. Walker testified she became so upset she had to go on break. That same afternoon Pierce returned to the store where he observed Walker had not increased her production, "she wasn't hustling," and he noticed she was not adjusting the scales to deduct the weight of the packaging material. Later, he requested Max Tipton to time Walker for 10 or 15 minutes.

The Respondent contends, in effect, that Walker engaged in a work slowdown after her transfer to Store 527. Except for the foregoing, the evidence to support this is based on Pierce's testimony as to what Market Manager Robinson had told him. As heretofore noted, Robinson was not called to testify and no reason therefor was given. I cannot make a finding as to Walker's conduct based on this testimony. In any event, the asserted work slowdown does not appear to be directly related to Walker's separation from the Respondent's employment.

The events leading up to Walkers' termination are not in dispute in crucial part. On Wednesday, October 5, Robinson assigned part-time "deli-girl" Ruth Green to work with Walker wrapping meat. At or about 12:30 p.m., Walker and Green got into a "dispute" at which time Green became "upset" and left the market area. Robinson asked Walker what she had done to Green and Walker replied that she had done nothing. Robinson left the market, apparently in pursuit of Green, and returned a few minutes later without Green. He told Walker to go home and to talk with Jackie Pierce before she returned to work. Walker left the store and went to a local motel where she reported these events to Union Representative Gilbert Barber. She did not attempt to contact Jackie Pierce.

Walker attempted to telephone Pierce at Store 529 on Thursday, October 6, in the afternoon, and was told that Pierce was not there. She did not leave a message for him to return her call because she was not planning to be at home. When Walker returned home at or about 7 p.m. on October 6, her roommate informed her that Worlin Robinson had called that morning inquiring as to why she was not at work. On October 7, at or about 9:30, Robinson telephoned Walker and asked if she had talked to Pierce. Walker replied in the negative, and Robinson told her he was tired of her little "games" and hung up. Walker then telephoned Union Representative Gilbert Barber, who told her to come to the motel and they would try to get "ahold" of Pierce. She did so, and about 10:30 a.m. made an appointment to meet Pierce at a local restaurant called "K-Bobs" located near Store 529. Gilbert Barber drove Walker to her meeting with Pierce. Discharged employee Priscilla Sain also accompanied her to the restaurant. However, neither she nor Barber was present when Walker met with Pierce.

Both Pierce and Walker testified with respect to what was said at this meeting. They essentially corroborated each other and there is no direct conflict of testimony. It is unclear as to who initiated the conversation. It is clear that Pierce discussed Walker's alleged slack in her work and her lower production. Walker complained about the old equipment at Store 527 and attributed her lower production to the equipment. Pierce told her, apparently several times, that she was going to have to do better and that Pierce knew she could do better. According to Pierce, Walker requested to be transferred back to Store 529. After some further discussion, Pierce asked Walker if she wanted to discuss anything else and Walker said "no." Neither Pierce nor Walker addressed the issue of the dispute with Green for which Walker had been sent home.

On these facts Walker testified that she "assumed" that she was fired since Pierce did not specifically tell her to return to work. On the other hand, Pierce testified that he thought Walker was going to return to work at Store 527 at 1 p.m. that day. Walker did not thereafter report to work.

According to Pierce, when Walker did not report to work on Saturday, October 8, he instructed Robinson to telephone Walker to find out why she was not at work. Pierce testified he was present when Robinson phoned Walker's residence and could not reach her. He then sent Walker a telegram telling her that he assumed she had quit by failing to report for work on Thursday, Friday, and Saturday. The telegram also noted that Pierce had talked with her on Friday and that in his presence Robinson had tried to call her on Saturday and had been told by her roommate that she had gone to Dumas. Pierce testified that they did not normally send a telegram in cases like this but he did not want Walker showing for work on Monday.

The General Counsel argues that Walker was discharged as of the time of her conversation with Pierce on Friday and the telegram was a maneuver to bolster a "somewhat questionable reason for terminating an avid Union adherent." In the alternative he argues that her separation constituted a constructive discharge because of the "revised" working condition put into effect during her last weeks of employment.

The Respondent contends that Walker quit and that its telegram was merely a confirmation of her quitting.

Neither Walker's transfer to Store 527 nor her suspension on October 5 by Robinson are alleged as independent violations of the Act. However, the General Counsel appears to contend that Walker's transfer to Store 527, the Respondent's dissatisfaction with her work there, and Robinsons' sending her home on October 5 are all part of a scheme to either give the Respondent a pretext for which to discharge her or to make her working conditions so intolerable that she would quit, constituting a constructive discharge because of her avid support for the Union.

Notwithstanding the Respondent's pervasive union animus as found herein, in my opinion the General Counsel has not established by a preponderance of credible evidence that the Respondent's efforts to improve its profit factor was motivated by union considerations. This, of course, does not preclude a finding that the Respondent implemented its legitimate program in a manner designed to get rid of union adherents. I have found such to be the case in a number of instances discussed above.

The evidence, considering all the inferences to be drawn from the Respondent's union animus, is insufficient on the facts here to find that Walker's transfer to Store 527 was discriminatorily motivated or a part of a plan to get rid of her. Once at Store 527, Walker was clearly unhappy and her production admittedly dropped. Whether the production drop was entirely due to the antiquated equipment, as Walker contends, or whether she "slowed" down as the Respondent contends, is not a crucial issue. There is no contention that Robinson's sending Walker home on October 5 constituted her discharge,

nor does the record support such. Thus, the events occurring between October 5 and Walker's talk with Pierce on October 7 must be analyzed.

Walker's conduct after October 5, when she was sent home by Robinson with instructions to talk with Pierce before she returned to work, is, to say the least, perplexing. Just what she was to talk with Pierce about is unclear. I must presume that it had relevance to the dispute with Green which precipitated the incident. As noted above, the nature of the dispute with Green is also unclear. In any event, by Walker's own testimony, she did not attempt to contact Pierce for more than 24 hours, and that attempt does not appear to have been serious. Walker knew Pierce did not have an office in Amarillo but used Phelps office when he was there. She also admitted that she knew the best way to "get in touch" with Pierce was to leave a message and let him return the call. However, she did not do that with the only explanation being that she was not going to be home. It was only after Robinson left a message for her on October 6 and talked with her on the telephone on October 7, that she made any serious effort to contact Pierce.

What transpired at the meeting with Pierce is also unclear. Neither the testimony of Walker nor Pierce presents a cogent dialogue of what was said. While it is clear, as argued by the General Counsel, that Pierce did not specifically tell Walker to return to work, it is equally clear that Walker did not address the apparent reason for her suspension or ask Pierce if she could return to work. The substance of Pierce's remarks to Walker at this meeting was to admonish her that she needed to improve her work efficiency at Store 527 and to express his confidence in her that she could do so based on her past performance. These statements to Walker clearly indicates that Pierce contemplated her continued employment, and are not reasonably susceptible of the construction placed on them by Walker; i.e., that she was fired.

Upon the foregoing, I am convinced, and I find and conclude, that Walker was unhappy with her transfer to Store 527 and set about to let the Respondent know she was unhappy by letting her production drop. I am also convinced that Walker had no intention of returning to work after her October 5 suspension regardless of any talk with Pierce. Accordingly, I find and conclude that she voluntarily quit her employment and that such action was not caused by the Respondent's other unfair labor practices including any harassment or disparate treatment of her.

I recommend that the complaint be dismissed with respect to Walker's discharge.

D. *The Representation Proceeding in Case 16-RC-7579 (Grocery Unit)*

The unfair labor practices found above occurring between August 5 and December 7 are sufficient to warrant setting aside the election. Consolidated for hearing, but not alleged as unfair labor practices, are the Union's Objection 6 and a portion of Objection 8.[29]

In support of Objection 6, the Petitioner introduced into evidence four pictures or leaflets which were either posted in one or more of the four stores or mailed to employees prior to the election. The first subject is an 8- by 10-inch picture of a male individual carrying a picket sign bearing the legend "ON STRIKE against FOODWAY[30] No Contract—No Work RETAIL CLERKS Local 462." The undisputed testimony of employee Pam Nicholson and Union Representative Barber establishes that this picture was posted near the timeclock located at the front of Stores 526, 527, and 530. It is unclear from the testimony as to how long, prior to the election, this picture was posted or whether it was posted at the time of the election. The parties stipulated that Retail Clerks Local 462 was on strike in nearby New Mexico at the time of the election herein. There is no evidence as to who posted this picture. In any event I must presume that management personnel were aware of this posting and tacitly adopted its message.

About 2 weeks before the December 7 election, the Respondent mailed to all employees a leaflet captioned "THE TRUTH OF THE MATTER" and displayed a picture of a "Piggly-Wiggly" store beside which was printed in ink "Closing Saturday Night 12-10-77. Just below this was "The union doesn't tell you how many jobs have been lost because of unions. The Piggly-Wiggly here in Amarillo is only one example." The remainder of the closely typed 8-1/2- by 14-inch leaflet dealt with a lengthy strike by the Retail Clerks in New Mexico and strike violence at a store called "Treasure City." It also alluded to wildcat strikes by members of the United Mine Workers and ended with "The truth of the matter is the Union never mentions the costs of belonging to the Union."

The third item objected to by the Union is a leaflet approximately 6 by 8 inches, captioned "THE REAL TRUTH OF THE MATTER." At the top of this leaflet is a picture of a man's face beside which was painted in large letters "CASHLESS CHRISTMAS." Thereafter, the leaflet purported to tell the story of a former United employee who had left to work at Furr's Supermarket which was represented by the Union at $1.29 per hour more than United paid. After 2 weeks he was laid off and although the Union promised to find him other work it was either unable or refused to do so. The thrust of the article was that "Phil" and his family would have a sad Christmas. This leaflet was prepared by employee Paul Baker and posted on several cash registers at Stores 522, 526, and 527 for an undisclosed period of time.

No effort was made to establish that any of the purported events or facts asserted in the propaganda discussed above were untrue or incorrectly presented. The Respondent argues that the literature discussed is within the legitimate parameters of its organizational campaign

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[29] Objection 6:

> At various stores the employer posted literature, both before and during the election, to the effect that a vote for the Union was a vote to strike. Such material was posted by the official election notices, in the polling area, and elsewhere in the store . . . . The impact of this material was to the effect that Union people got laid off and that Union stores would close permanently.

Objection 8: In pertinent part, "The Company observes [election] with employees in the voting area."

[30] Superimposed in smaller letters over "FOODWAY" is "WINN-DIXIE."

and its privilege to express its views, arguments, and opinions. The Union contends that this literature is objectionable since it "leave[s] the clear implication to employees voting in the election that there will be plant closings and lay offs in the event the union were voted in."

The literature here in issue deals exclusively with store closings, loss of jobs, and violence resulting from employees selecting the Union to represent them. Notwithstanding that the accuracy of the events asserted is not contested, I find and conclude that, in the context of this Employer's unlawful antiunion campaign, the posting and distribution of this literature interfered with the employees' rights to cast a free ballot in the election.

It is well settled that an employer has a right to advise its employees of potentially adverse consequences of selecting the union to represent them and to do so by giving examples of such adverse results at other employers. However, where, as here, the employer has already engaged in widespread interference, restraint, and coercion of its employees' Section 7 rights by threatening, *inter alia*, that all or some of its stores would be closed; that employees would be discharged or laid off if the Union were selected; and that it would not bargain in good faith with the Union and would never sign a contract, the distribution of literature asserting that other employers had done exactly what it had threatened to do can only have the effect of reiterating its previous threat. Accordingly, Objection 6 has been sustained.[31]

In support of Objection 8, the Union's observer at the election in Store 527, Pam Nicholson, testified that the Employer's observer, Dan Green, engaged in about a 2-minute conversation with an employee who was waiting to vote. She testified that although she was only about a foot away from Green at the time she did not overhear any part of the conversation. Neither Green nor the employee he allegedly talked with was called to testify.

The Union contends that this incident falls squarely within the rule enunciated by the Board in *Milchem, Inc.*, 170 NLRB 362 (1968), that conversations between representatives or agents of the parties with employees while in the voting area or waiting in line to vote is *per se* objectionable conduct without any inquiry into the subject matter of the remarks. The Respondent argues that this undisputed incident falls within the exception to the rule since it was a "chance, isolated, innocuous comment or inquiry."

The length of this conversation, estimated to be about 2 minutes, appears to me to be somewhat more than the chance or isolated remarks contemplated by the Board in that exception. Whether the remarks were innocuous is not known since there was no testimony in that regard. Accordingly, I find that the Charging Party has sustained Objection 8. True, were this the only objectionable conduct it would not be sufficient to set the election aside since it involved only one employee whose vote was not dispositive of the election, *The Mead Corporation Harriman Division*, 189 NLRB 190 (1971).

The unfair labor practice occurring between August 5 and December 7, as found above in conjunction with the objectionable conduct found herein, require that the December 7 election be set aside. In view of my findings hereafter that the union did not represent a majority of the employees in the unit at any relevant time as demonstrated by the authorization cards admitted into evidence, a bargaining order will not be recommended. Instead, I shall recommend that a second election be conducted among the employees in the unit at a time determined by the Regional Director for Region 16, after the Respondent has complied with the remedial order attached hereto, and to the extent possible have eradicated the effects on the employees of the unfair labor practice found herein.

E. *The General Counsel's Request for a Remedial Bargaining Order*

The complaint alleges that the acts of the Respondent alleged therein "was and is of so serious and substantial a nature as to warrant the entry of a remedial bargaining order requiring Respondent to recognize and bargain with the Union in the appropriate unit" as described in the complaint. The complaint alleges, and the General Counsel and the Charging Party argue, that the Respondent's duty to bargain arose on August 4, 1977, the date on which the Union made a bargaining demand and by which date the union had obtained valid authorization cards for representation from a majority of the employees in the appropriate unit. In the alternative, it is argued that if it cannot be found that the Union enjoyed majority status on August 4, it thereafter, by October 29, did obtain such status, and that the Respondent's outrageous and prevasive unfair labor practices as alleged in the complaint dissipated that majority status so that the Union lost the December 7 election by a margin of 62-to-26 with 22 challenged ballots. The General Counsel further argues that it would be appropriate in this case to consider the cards signed prior to the election and the votes cast in the election to determine majority status as the Board did in *Pinter Bros., Inc.*, 226 NLRB 921 (1977).

The unfair labor practices found herein demonstrates that from the time the Respondent learned of the union activity among its meat department employees until shortly before the December 7 election among the grocery department employees, it set upon an unlawful antiunion campaign designed to undermine the Union's representative status and interfere with its employees' Section 7 rights. While the Union conducted campaigns in two separate units, in part simultaneously, to all intents and purposes it was one campaign and it is necessary to consider all of the Respondent's unfair labor practices, including those committed by and against its meat department personnel, in assessing whether such conduct was so outrageous, egregious, and pervasive that it cannot be remedied by the usual cease-and-desist and make-whole order, and thus, a second free and fair election cannot be held.

[31] The Union also urged that a notice "To All Employees" (Exh. 4) posted in the stores for about a month before the election is also objectionable. The Union does not indicate any specific statement or context in this 8-1/2- by 14-inch notice which it deems objectionable. I have carefully considered the contents of this literature and find nothing, in my opinion, which is objectionable or would tend to interfere with employee rights.

It is not here necessary to review each of the numerous acts of unlawful interference, restraint, and coercion committed by the Respondent and directed to a substantial number of employees. In addition thereto, the Respondent unlawfully discharged nine of its employees which clearly tended to discourage union activity among other employees. The flagrant nature of these violations are clearly within the purview of those found by the Board in numerous other cases to warrant a bargaining order since the effects thereof on the employees cannot be eradicated by the usual remedial order. It is clear that these unfair labor practices rise "to the level of imminent or future threat to the process of collective bargaining." *Shulman's, Inc., of Norfolk* v. *N.L.R.B.*, 519 F.2d 498, 502 (4th Cir. 1975).

The Union's Majority Status on or After August 4

The resolution of the question of majority status of the Union at some relevant time between August 4 and October 29 presents a plethora of complex issues not only with respect to the identity of the employees employed in the unit but with respect to the Respondent's challenge to virtually all the authorization cards introduced into evidence on a multitude of grounds.

The General Counsel introduced into evidence a copy of the Respondent's payroll records for the week ending August 6 and a copy of the official voters list which was taken from the payroll records for the week ending October 29. These lists, as amended, constitutes the only evidence as to the complement of the unit at any time. There is no evidence in the record upon which a determination can be made as to whether the Union represented a majority of the unit employees during the interim period. Near the conclusion of the hearing the General Counsel subpoenaed the Respondent's payroll records for the interim period. Although the motion to revoke the subpoena was denied, the Respondent refused to comply therewith on the grounds that those records standing alone would not accurately reflect the employees in the unit. I suggested to the parties that after the close of the hearing they endeavor to reach a stipulation regarding the unit complement during this period and submit it to me as a post-hearing exhibit. The Respondent asserts in its brief that neither the General Counsel nor the Charging Party ever contacted him to examine such records to arrive at an appropriate list.

Rather than obtaining enforcement of the subpoena in an appropriate United States District Court, as was his option, the General Counsel urges that I apply the adverse inference doctrine and infer that the production of these documents would have been adverse to the Respondent's interest and would have established that at some relevant time the Union had valid authorization cards from a majority of the employees in the unit. As demonstrated above, I have liberally applied the adverse inference doctrine where the Respondent has failed, without explanation, to call material witnesses and produce relevance documents. However, I know of no case, and the General Counsel does not cite one, where the Board has determined majority status of a union based on adverse inferences drawn from a respondent's refusal to produce payroll records.[32] The burden of proof is upon the General Counsel to esablish by affirmative probative evidence that at some relevant time the Union represented a majority of the employees in the appropriate unit. It should be noted that the General Counsel could have obtained the record he sought by obtaining enforcement of his subpoena. In my opinion, the potential of thrusting a minority representative upon the employees is too great when done so by application of the adverse inference doctrine as urged here.

The General Counsel introduced into evidence 69 authorization cards purportedly signed by employees in the unit on or before August 4 and 11, such cards signed between August 12 and September 14. From the Respondent's August 6 payroll records the parties stipulated to the identity of 132 employees appropriately within the unit. As of August 454 of these employees had signed authorization cards. Not on the employer's payroll for August 6, but who must be included in the unit on August 4, are the four grocery department employees whom I have found herein to have been discriminatorily discharged prior to August 4. (Bollen, Bates, Stanberry, and Murray.) These four employees bring the complement to 136 with 58 signed authorization cards. Next, there are several employees on whom the parties could not agree.

Contrary to the Respondent, the General Counsel contends that Janet Callaghan should be included in the August 4 unit. Callaghan, an employee of Store 533, appeared on the August 6 payroll record which reflects that she did not work any hours that week or thereafter. The Employer maintains 3-by-5 cards reflecting terminations which the Respondent insists are not accurate since they are kept primarily for unemployment compensation purposes. In any event, this card reflects that Callaghan was terminated on August 15. The fact that Callaghan did not work the week of August 6, or thereafter, is not controlling as to her employee status on August 4, in the absence of evidence that she had been separated from the unit prior to that date. Accordingly, Callaghan, who had signed an authorization card, is included in the unit.

The General Counsel contends that Debbie Beaudrie, an employee of Store 527, should be included. The Respondent does not address the issue of Beaudrie in its brief. However, her name is not included on the list of employees the Respondent contends were agreed upon by the parties. The record shows that Beaudrie was hired on June 22 and worked thereafter through the week of July 23. She did not work during the payroll period ending August 6, but did work 5 hours during the following payroll period. She was on the payroll list for August 6. The fact that she did not work during the week of August 6 is not controlling in the absence of evidence showing that her employment status had been

[32] The General Counsel cites *Stone & Webster Engineering Corp.*, 229 NLRB 612 (1977); *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)* v. *N.L.R.B.*, 459 F.2d 1329 (D.C. Cir. 1972), and *N.L.R.B.* v. *C. H. Sprague & Sons Co.*, 428 F.2d 938 (1st Cir. 1970). These cases deal with the application of general adverse inferences in Board cases, but do not, in my view, support the application of such adverse inference here.

interrupted for that week. Accordingly, I include her in the unit. Beaudrie signed a card.

Contrary to the Respondent, the General Counsel would exclude Charlene Smithey as "supervisor in charge of the drug crew." Smithey is the wife of Area Grocery Supervisor Max Smithey and the record reveals that she is responsible for stocking the drug sections in each of the seven stores in the division and is apparently under the supervision of the respective store managers when working in the several stores. There is no evidence that Smithey has been granted or that she exercises supervisory authority over any employee. Unlike supervisory personnel, she is hourly paid and does not attend supervisory or managerial meetings. In the absence of evidence that Smithey receives special privileges or favored treatment, her relationship to the area supervisor is not sufficient to exclude her from the unit. Notwithstanding the fact that her position appears to be a unique one in the Respondent's operation, on the facts here, I find that she shares a sufficient community of interest with the other employees to be included in the unit. Smithey did not sign a union card.

The General Counsel would exclude Richard Garcia; the Respondent would include him. The record reveals that Garcia's name appeared on the August 6 payroll as well as the August 13 payroll, but that he worked no hours during those periods or thereafter. The Respondent's 3-by-5 card on Garcia shows a termination date of August 1, 1977, with a note "M.P.'s got him and not recommended for reemployment." There is no explanation why Garcia's name continued to appear on the payroll for 3 weeks after he was terminated and was possibly unavailable for work because of his encounter with the M.P.'s. The parties appear to agree that neither the Employer's computer payroll printout or the 3-by-5 termination cards, above, are reliable indicia of employee status in many instances. I agree. Although there is no evidence as to when or by whom the 3-by-5 card was prepared, I am persuaded in this instance that it is the more reliable indicia of when his employment status ceased. Accordingly, he is excluded from the August 4 unit.

Contrary to the Respondent, the General Counsel would exclude Debbie Lynn Stacey from the unit on the grounds that she occupies a security position, has no community of interest, and is a confidential employee. The record discloses that Stacey worked at Store 529 in the "check office" with Pete Moore, who has heretofore been called the "check man." Insofar as the record reveals her exclusive duties are to make telephone calls, type, and mail letters, all with reference to bad checks. It appears that she is hourly paid and enjoys the same fringe benefits as the other employees. There is nothing in her duties that suggests that her position has anything to do with security or that her duties are those of a confidential employee within the meaning of that classification as utilized by the Board. Similarly, there is no evidence that suggests that she has no community of interests in the wages, hours, and other working conditions of the employees who work on the floor of store. I note that the unit description alleged by the General Counsel neither includes nor excludes office employees. The Charging Party argues that she is a plant clerical. Plant clerical employees are included in a P & M unit unless excluded by agreement. I include her in the unit.

The General Counsel would exclude, contrary to the Respondent, Janice Irene Harp of Store 529 as being in the meat department and thus, not in the unit. The record shows that Harp was classified "02-10," which is the classification for meat wrappers and also, according to the Respondent, for employees in the bakery department. Grocery Supervisor Max Tipton testified that he did not know whether Harp was a meat wrapper or bakery department employee. In its brief, the Respondent asserts that Harp was not shown on the voting list for the meat department. However, the August 6 payroll list indicates that Harp was not hired until August 1, and thus not employed when that list was prepared. The Respondent was clearly in the best position to present evidence concerning her duties and failed to do so. I exclude Harp from the unit.

In addition, it appears that the General Counsel and the Respondent agreed that Edith Staton, who did not sign a card, should be included in the unit since the General Counsel concedes so in his brief and her name appears on the Respondent's list of agreed-upon employees.

At the hearing the Charging Party objected to the inclusion of Raymond (or Ramon) Garcia for some undisclosed reason. The Respondent addresses this contention in his brief but the General Counsel does not. The record discloses that Garcia was hired as a stocker at Store 529 on June 20, and appeared on the August 6 payroll during which payroll period he worked 40 hours. He was clearly within the unit on August 4. He did not sign a card.

At the hearing the General Counsel and the Charging Party objected to the inclusion of Susan Jane Cumming on the grounds that she was a supervisor. The issue is not addressed in the brief of either. Max Tipton testified that Cumming was a part-time bakery department employee which is supported by the payroll printout, which shows her job classification as "10." He further testified that she had never been assigned supervisory duties. I include her in the unit.

The Decision and Direction of Election which issued November 4 included "all part-time sackers who worked at least 18 separate weeks" prior to the issuance of that decision. At the hearing the Respondent argued that only those cards signed by part-time sackers who had been employed 18 separate weeks at the time they signed the card should be counted, or in the alternative only those who had worked 18 separate weeks by August 4. The record discloses that there were 32 part-time sackers employed on August 4, of which 7 signed cards. None had been employed 18 weeks when they signed cards. The General Counsel contends that cards signed by all part-time sackers should be counted without regard to the length of time they had worked prior to August 4, and that only they be included in the unit. The Respondent vigorously opposes this formula and argues that all such employees should be included in the unit. If all 32 disputed employees are counted in the unit when there is a unit of 175 employees and 67 authorization cards signed prior to August 4. However, structuring the unit in the

manner most favorable to the General Counsel by including in the unit complement only the 7 disputed employees who had signed cards there is a unit of 150 employees and 67 authorization cards as of August 4.

Also received into evidence was a card signed by Eleazer Cantue on June 14. The August 6 payroll records do not include Cantue's name. The only testimony relating to this issue is that of Gilbert Barber who testified that Cantue told him he had never quit the Respondent's employment. Cantue's name was on the voting list and he voted in the December 7 election. This evidence is insufficient to warrant an inference that Cantue was in the Respondent's employ on August 4. He is excluded.

Also received into evidence was a card purportedly signed by Sherri Somers on July 13. Somers name does not appear on the August 6 list and the Respondent asserted that she was not employed on August 4 or thereafter. Neither the General Counsel nor the Charging Party presented any evidence to the contrary. Accordingly, she is excluded.

It is clear that structuring the unit by the formula most favorable to the General Counsel and the Union that there were 150 employees in the unit on August 4, and on that date the Union had obtained 67 authorization cards which fails to establish that the Union represented a majority of those employees on that date.

In his brief, the General Counsel argues that the cards of seven employees, one a part-time sacker, who were employed on August 4, and subsequently, between August 12 and September 14, signed cards, should be counted as of August 4. He cites no authority for this formula. Certainly the cards are to be counted as of the date they are signed and measured against the employee complement at that time. As heretofore noted, the only reasonably accurate employee lists are those of August 6 and October 29 from which the voting list was compiled. Received into evidence as the Respondent's Exhibits 21 through 27 are lists of terminations at each of the Respondent's stores for the period July 9 through October 29 and as the Charging Party's Exhibits 16 through 22 are lists of new hires at each of the stores for the same period of time. Both lists were prepared by the Respondent. The parties refused to stipulate the accuracy of these lists. However, it is the best evidence before me. I have utilized these lists and laboriously endeavored to construct the unit complement for each week between August 4 and October 29. Considering the terminations and hires for each week measured against the additional cards signed after August 4, it is clear that the Union did not have valid authorization cards from a majority of employees in the unit at any given time.

Thus assuming that validity of all cards received into evidence, the Union never enjoyed majority status.

Conclusion With Respect to the Request for a Remedial Bargaining Order

The General Counsel and the Charging Party contend that the entry of a remedial bargaining order is warranted in this case even if the Union never enjoyed majority status based on valid authorization cards since the Respondent's unfair labor practices as found herein are so outrageous and pervasive that their coercive effects cannot be eradicated by the traditional remedies and a second free and fair election cannot be held.

The Respondent asserts that even were I to construct a unit in which the Union enjoyed majority status based on its cards, a bargaining order is not appropriate since the traditional remedies could restore the employees freedom of choice.

In *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), the Supreme Court approved the Board's use of bargaining orders to remedy an employer's independent 8(a)(1) and (3) violations which fatally impeded the holding of a fair election in two situations. The first involves "exceptional" cases where the unfair labor practices are so "outrageous" and "pervasive" that "their coercive effect cannot be eliminated by the application of traditional remedies, with the result that a fair and reliable election cannot be had." The second covers "less extraordinary cases . . . which nonetheless still have the tendency to undermine majority strength and impede the election processes" but there must be "a showing that at one point the union had a majority."[33]

The Board was presented with a *Gissel* first category case, clearly similar to the instant matter, in *United Dairy Farmers Cooperative Association*, 242 NLRB 1026, 1027 (1979), and a majority of the full Board held that:

> In sum, upon careful consideration of the policies contained in the Act, the special responsibility of the Board to formulate remedies which further those policies, and the proper scope of the Board's remedial powers, we find that the Board's remedial authority under Section 10(c) of the Act may well encompass the authority to issue a bargaining order in the absence of a prior showing of majority support.

However, the Board, while recognizing that the employer's unfair labor practices in the *United Dairy Farmers* case were well within this first category delineated by the Supreme Court in the *Gissel* case ("outrageous" and "pervasive"), and for which, in accordance with *Gissel*, a bargaining order might well be an appropriate remedy, nevertheless declined to utilize such a remedy therein.

The rationale underlying the Board's refusal to issue a bargaining order lay in its balancing of "the policy in favor of enabling employees freely to exercise the right to choose whether they desire to be represented by the union via an election against the damage to the election process caused by the employer's unfair labor practices." The Board, in the *United Dairy Farmers* case, continued (at 1028):

> Where a majority of the employees have indicated their support for the union by cards and an employer's unfair labor practices have precluded the holding of a fair election, the Board has traditionally

[33] *N.L.R.B.* v. *Gissel Packing Co., Inc., supra* at 613–614; *N.L.R.B.* v. *S. S. Logan Packing Company*, 386 F.2d 562, 570 (4th Cir. 1967); *N.L.R.B.* v. *Heck's, Inc.*, 398 F.2d 237, 338 (4th Cir. 1968). The Supreme Court in *Gissel* also indicated that the scope of the Board's remedial authority is broad (395 U.S. at 614).

balanced those, interests in favor of the issuance of a bargaining order as The Remedy best suited to restoring the *status quo ante* consistent with the policies of the Act. Thus, a bargaining order not only eliminates the damage to the election process but, in addition, restores the prior expression of employee support for the union consistent with the principle of majority rule.

* * * * *

A different question arises, however, where the union has never obtained a showing of majority support and an employer's unfair labor practices have precluded the holding of a fair election. The imposition of a bargaining order in such cases does not restore the status quo—that is, an expression of majority support for the union—because there was no majority support and there is no assurance that a majority of employees would have supported the union had the employer refrained from engaging in unfair labor practices. A bargaining order in these circumstances presents a substantial risk of imposing a union on nonconsenting employees and could only be justified if it served a substantial remedial interest.

. . . However, on the facts in this case we are persuaded that, in the absence of a prior showing by the Union of majority support at some point in the proceeding, it is less destructive of the Act's purposes to provide a secret-ballot election whereby the employees are enabled to exercise their choice for or against union representation than it is to risk negating that choice altogether by imposing a bargaining representative upon employees without some history of majority support for the Union. . . .

However, the Board has not yet faced a case described in *United Dairy Farmers*, fn. 11.[34]

In view of all of the above, and even though the extensive unfair labor practices committed by the Respondent herein (numerous threats of plant closure; of discharge of employees, and of loss of benefits; coercive interrogation of employees; spying on and report the union activity of fellow employees; the discharges and the failures and refusals to reinstate nine of its employees; creating the impression of surveillance, etc.) are so "outrageous" and "pervasive" as to tend to restrain its employees in the exercise of their Section 7 rights, thus rendering impossible a fair election. In view of the Board's Decision in *United Dairy Farmers, supra*, by which I am bound, I will *not* recommend that the Respondent be ordered to recognize and, upon demand, bargain with the Union as the exclusive bargaining agent of the unit herein.[35]

F. *The Representation Proceeding in Case 16-RC-7556 (Meat Market)*

Also consolidated for hearing with these cases are the issues raised by the Employer's Objections 1 and 5 which were filed to the August 26 election in the meat market.[36] The petition in this case was filed by the Teamsters on July 1 and the Union herein intervened on July 6.

With respect to Objection 1, the Employer contends that the presence of Market Manager Max Ward, after his promotion about June 15, and other market managers at union meetings wherein employees were solicited to sign cards supports Objection 1. The record discloses that in addition to Ward one or more market managers or assistant store managers attended some of the union meetings early in the campaign. However, it is not shown that, other than Ward, these supervisors actively participated in urging employees to support the Union. Moreover, it appears, again with the exception of Ward, that once a determination of their supervisory status had been made or an agreement thereon reached, they ceased all such activity. It is clear that by the date of the election the Employer had demonstrated to all the employees its unalterable opposition to unionization, and the employees were well aware that any prounion sentiment ex-

[34] The Board has consistently declined to issue a bargaining order in cases where, although the employer has committed massive "outrageous" and "pervasive" unfair labor practices, the union never attained majority support of the employees at any time. See *Haddon House Food Products, Inc. and Flavor Delight, Inc.*, 242 NLRB 1057 (1979); *Daniel Construction Company, a Division of Daniel International Corporation*, 244 NLRB 704 (1979); *Miami Springs Properties, Inc., and James H. Kinley and Associates, Joint Employers*, 245 NLRB 278 (1979); *Woonsocket Health Centre*, 245 NLRB 652 (1979); *Triana Industries, Inc.*, 245 NLRB 1258 (1979); and *Sambo's Restuarant, Inc.*, 247 NLRB 771 (1980). It should be noted that the General Counsel in its brief discusses extensively and in great depth the validity and number of the authorization cards obtained by the Union. In its decisions issued subsequent to the *United Dairy Farmers* case, the Board appears to have attached little or no significance to how close the union came to attaining a majority. The above cases in which the signed authorization cards were obtained included: *Haddon House* (27 of 56 unit employees), *Daniel Construction* (less than 30 percent of the employees signed cards), *Miami Springs* (46 percent of the unit employees supported the union), *Woonsocket Health Centre* (nearly 40 percent signed union authorization cards), *Triana Industries* (between 40–47 percent of the employees signed authorization cards), *Sambo's* (the union garnered less than 34 percent of the unit employees). In view of this, I merely make reference to the General Counsel's assertion that approximately 46 percent of the unit employees in the instant matter signed union authorization cards in support of the Union, assuming *arguendo* that all these cards are valid. In this connection, the General Counsel proffered 67 authorization cards signed by the Respondent's unit employees in behalf of the Union out of a unit of 150.

[35] I am aware that at this time the United States Court of Appeals for Third Circuit had remanded *United Dairy Farmers Cooperative Association*, 633 F.2d 1054 (1980), to the Board for reconsideration in light of that court's finding that *Gissel* in fact authorizes the Board to issue remedial bargaining orders even in the absence of a showing that the union at relevant times represented a majority of the employees in the unit. Member Penello was of the opinion in that case that the Board had no such authority and did not decide whether a bargaining order would be appropriate in that case if it had such authority.

[36] The Employer's Objection 1:

> The union interfered with a free election by requesting that supervisors solicit authorization cards from the employees in the unit and engaged in other pro-union activities. Several supervisors did engage in such activities on behalf of the union.

The Employer's Objection 5:

> The union interfered with a free election by making direct or indirect threats that employees would be fired if the union were not supported.

pressed by a supervisor did not represent that of management. Even assuming, as the Employer argues, that the presence of supervisors at these meetings may have induced some employees to sign cards either because they thought management was supporting the Union out of fear of retaliation by a union-oriented supervisor, and, thus, the cards might be tainted if used to establish majority, I am not persuaded that the employees' freedom of choice was so affected at the time of the election. It should be noted that the Employer had terminated Ward for alleged threats of reprisal against nonunion employees thus assuring the employees that a prounion supervisor would have no opportunity for retaliation.

Objection 5 deals exclusively with threats made by Ward. In support of this objection, the Employer cites three separate instances of Ward's conduct. The first occurred on June 11, prior to Ward's becoming a supervisor and prior to the date the petition was filed. Ward admitted that at a union meeting on June 11, attended by about 27 meat department employees, he made the statement "If someone is an informer then that person will be punished."

The second incident involves a statement made by Ward at the July 13 meeting. According to Charles Sooter, whose testimony I credit:

> A. [He] invited everybody else, you know, to join that wanted to and he said he knew that we had people that was against it and that was fine for the company and he would not tolerate it if he knew who they was, but he was going to continue to promote it and do everything within his power to get it in.

The third incident as discussed in connection with Ward's discharge occurred the following day. Ward admitted that in the presence of three meat department employees he told Linda Brownlee, a grocery department employee, that "squealers were the ones that were going to be fired first as soon as the union got in." Ward had accused her of being a company spy when she refused to sign a union card. It was this conduct that precipitated Ward's discharge.

Ward's conduct here is very similar to that of the supervisor considered by the Board in *Rocky Mountain Bank Note Company*, 230 NLRB 922 (1977). There, as here, the union knew him to be a supervisor and continued to use him as an organizer. He thereafter directly or indirectly made threats of reprisals to employees who failed to support the union. Some 5 weeks prior to the election the Employer suspended and subsequently discharged him. The Board concluded that such supervisory participation in a union campaign can be grounds to set aside an election in two different situations:

> [F]irst, where the employer has taken no known stance contrary to the union, thereby leading employees to believe that the employer favors the union; and second, where the supervisor's remarks are made to employees with whom the supervisor will have a continuing relationship, thereby causing employees to fear supervisory retaliation should they not favor the union.[1]

[1] *Flint Motor Inn Company d/b/a Sheraton Motor Inn*, 194 NLRB 733, 735 (1971).

Here it is evident that the first instance mentioned is not applicable, for the Employer immediately made known its stance contrary to the union. As to the second situation, here, as in *Rocky Mountain, supra*, Ward, the offending supervisor, was discharged some 6 weeks before the election and at the time of the election was no longer in the Respondent's employ. Here, unlike in *Rocky Mountain*, charges were filed with Regional Office of the Board contending that Ward's discharge was unlawful. However, at the time of the election no complaint had issued seeking his reinstatement or rehire. In my opinion, under the circumstances here, the employees could have no reasonable expectation of having a continuing relationship with Ward when they voted. Accordingly, Ward's remarks during the critical period did not destroy the laboratory conditions surrounding the election. The Employer's Objection 5 is without merit and is hereby overruled. It will be recommended that a Certification of Representative issue in Case 16-RC-7556.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth above in connection with its business as set forth in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to disputes obstructing the free flow of commerce.

CONCLUSIONS OF LAW

1. Jurisdiction of the Board is properly asserted in this consolidated case including matters relating to the two representation proceedings.

2. All regular full-time employees, including bakery department employees, and regular part-time employees who have worked at least 18 separate weeks preceding this Decision and Direction of Election employed at the Employers seven retail grocery stores located in Amarillo, Texas. Excluded: all part-time sackers who have worked for the Employer less than 18 weeks, managers, assistant managers, meat department employees, watchmen, guards and supervisors as defined in the Act, as amended, constitutes a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act in Case 16-RC-7579.

3. All butchers and wrappers located in the United Supermarkets, Inc., stores in Amarillo, Texas. Excluded: head meatcutters, all other employees (grocery department employees), office clerical employees, managers, assistant managers, guards, watchmen and supervisors as defined in the Act constitutes a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act in Case 16-RC-7556.

4. The Union's Objections 6 and 8 to the December 7 election in Case 16-RC-7579 have been sustained and in conjunction with the unfair labor practices found herein occurring between August 5 and December 7, 1977, requires that election be set aside and a new election be directed and held as provided in the section of this Decision entitled "The Remedy."

5. The Employer's Objections 1 and 5 to the August 26 election in Case 16-RC-7579 have not been sustained and are overruled. Inasmuch as a majority of employees in the appropriate unit cast a free and uncoerced ballot for the Union, a Certification of Representative should issue.

6. By coercively interrogating its employees concerning their union activities and the union activities of other employees; threatening its employees that it would close some or all of its stores if they selected the Union to represent them; threatening its employees that their hours of work would be reduced and their production increased if they selected the Union as their collective-bargaining representative; threatening its employees with layoff and reductions in force in retaliation of the Union; threatening its employees that it would never negotiate in good faith with the Union or sign a contract; threatening its employees that it would "trump up" charges to get rid of union activists; promising its employees better wages and benefits if they rejected the Union; soliciting its employees to spy upon the union activities of other employees and report such activities to it; and creating the impression that it had their union meetings and other union activity under surveillance, the Respondent has violated Section 8(a)(1) of the Act.

7. By discharging and thereafter failing and refusing to reinstate its employees: Priscilla Ann Sain, Tanna Stoops, Van Bollen, Rick Stanberry, Claude Murray, Mark Soltis, Faye Bonner, Judy Grove, Donna Bates, and, demoting Mark Soltis form "third man" to stocker and reducing his hours of employment, the Respondent has violated Section 8(a)(3) and (1) of the Act.

8. The Respondent has not been shown to have violated Section 8(a)(1), (3) and (5) in certain particulars discussed above.

9. At no time relevant herein, between August 4 and October 29, 1977, did the Union represent a majority of the employees in the unit set forth in item 2, above, as demonstrated by valid authorization cards signed by employees in that unit.

THE REMEDY

Having found that the Respondent has committed acts in violation of Section 8(a)(1) and (3) of the Act, it shall be ordered to cease and desist therefrom and from any other unlawful activity and to take certain affirmative action designed to effectuate the policies of the Act.

The usual remedy for the violations found herein is the posting of the informational notice to employees in appropriate places in locations involved and the reinstatement of all unlawfully discharged employees and make them whole for losses due to the discrimination against them and cease and desist from any other unfair labor practices. However, as noted above, the Board in *United Dairy Farmers, supra*, indicated that in a case such as this additional remedial action may be directed that would "emphatically . . . inform employees of their Section 7 rights and assure that Respondent will respect the rights" and afford the union the "opportunity to participate in the restoration and reassurance of employee rights by engaging in further organizational efforts . . . free of further restraint and coercion."

In order to achieve these objectives for the employees here, I recommend that in addition to the usual remedy the Respondent be ordered to post copies of the notice to employees attached hereto marked "Appendix A," in appropriate places as directed herein in all of its retail grocery stores located in west Texas. Mail a copy of said notice to the home address of each of its employees employed in those stores and further that the Respondent's owner assemble the employees in its Amarillo division and read the notice to them and that proof of such action be submitted to the Regional Director for Region 16.

To provide the Union the opportunity to assist in the restoration of the employees Section 7 rights destroyed by it, the Respondent shall, upon request, grant the Union and its representatives reasonable access to its bulletin boards and all places where notices to employees are usually posted in all stores in its Amarillo division. The Respondent shall also grant the Union reasonable access to nonselling—nonwork areas of its stores during employees nonworking time. Further, the Respondent shall, upon request, supply the Union with an accurate list of the names and addresses of all its employees in the Amarillo division, within 1 year from the date of this Decision.

The Union shall further be given equal time and facilities to respond to any address by the Employer to its employees on the question of union representation.

All loss of earnings and other benefits due under the terms of this Order shall be computed with interest in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977).

[Recommended Order omitted from publication.]